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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

TUESDAY, JULY 17, 2007
10:08 A.M.

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STATE OF CALIFORNIA

HEARING

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ROOM 113

SACRAMENTO, CALIFORNIA

TUESDAY, JULY 17, 2007

10:08 A.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR ROY ASHBURN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Appointments Consultant

BILL BAILEY, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

MARY D. NICHOLS, Member
California Air Resources Board

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: Has anybody seen Mary Nichols?

MS. NICHOLS: I apologize, especially to you. I assume you want me here? I'm just guessing.

[Laughter.]

CHAIRMAN PERATA: Good morning.

MS. NICHOLS: Thank you.

CHAIRMAN PERATA: You are Mary Nichols as billed?

MS. NICHOLS: Yes, sir.

CHAIRMAN PERATA: Thank you for appearing before us today.

This is not a confirmation hearing; no vote will be taken.

This is just an opportunity, a rare opportunity from what I understand, to be able to have someone who is responsible for a very important position in state government to discuss with us the status of things as you begin your tenure.

There will be no witnesses and no testimony, other testimony, taken.

You have many fans here, but they're going to have to sign the book in the back, kind of like they're at a funeral hall.

[Laughter.]

CHAIRMAN PERATA: Just kidding.

MS. NICHOLS: A wedding.

CHAIRMAN PERATA: Or a wedding, yes.

I don't know if you know this, but you're not

going to get paid. We don't have a budget, so if you want to reconsider right now, I certainly would understand.

[Laughter.]

CHAIRMAN PERATA: You have a long and distinguished career and set of credentials in the environmental arena. I think generally the early book on you has been extraordinarily favorable.

You are, as you say, about to be a grandmother. You have, therefore, a vested interest in this, in addition to all in other interests -- is it a granddaughter or grandson?

MS. NICHOLS: It's going to be a granddaughter.

CHAIRMAN PERATA: So that your granddaughter will have clean air to breathe.

Clean air is an issue that I don't think is in dispute anywhere in California or by anyone. It is, probably next to water, type of water, the most important ongoing concern of Californians. And it makes no difference where you live, whether it's from representing the interior of Los Angeles, such as Senator Padilla, or a place called Bakersfield, or the Inland Empire.

I don't know if you know where that is. It's Riverside. It's a fabulous place.

MS. NICHOLS: I know about it.

CHAIRMAN PERATA: But we all share one thing in common: We're very concerned about the quality of the air.

Your agency has been called one of the most important environmental agencies in the world. The standards we set here in California are emulated and copied by other states

and other countries, and the CARB regulations resulted in the elimination of lead in gasoline, the installation of catalytic converters on cars, and the list goes on.

We have received the specific designation by Congress in the Clean Air Act that California is recognized unto itself. The real reason for this is, and the distinction that some people make between clean area and public health is a false distinction, in my judgment. Clean air is public health.

People can argue about the spotted owl, or wetlands destruction, but the clean air is a fundamental public health issue. Kids in the Central Valley have six times more asthma than kids elsewhere in the state. Teens who live near the freeways in Los Angeles and in Oakland have a clinically and measurable reduced lung capacity and increased respiratory problems.

Now, for a highly civilized state, that's a remarkable statement.

Unfortunately, the reputation of the board was damaged two weeks ago when the Board Chair and the Executive Director were fired and/or quit amid reports that the Governor's staff interfered with the board's deliberative process and tried to weaken clean air and climate programs.

Part of the reason for this early hearing is to get your assurances that you are taking steps to restore the confidence and the integrity of the board. We want staff stability. We want an executive officer and general counsel who know the law, understand the regulations and enforcement.

Second, we'd like to hear about any new ground

rules that have been established between you and Governor's Office to protect the process, the scientific independence of the board, and the assurances that you have that the board will make its own decisions without improper or undue influence.

I am assuming that someone who has spent so many years in public service under so many different conditions and leaders probably got assurances along these lines, but it would be nice to hear them aloud.

So, why don't we just start with that?

MS. NICHOLS: Okay, thank you.

CHAIRMAN PERATA: As you noticed, I wasn't going to give you any room to introduce yourself.

[Laughter.]

MS. NICHOLS: Well, I did actually take the liberty of preparing a page-and-a-half worth of notes.

CHAIRMAN PERATA: Go right ahead.

MS. NICHOLS: But I won't read it, actually. I think it's been distributed to everybody. And if it hasn't, it will be. I won't read it.

CHAIRMAN PERATA: It's so nice to have a pro here. That's great.

[Laughter.]

MS. NICHOLS: But I really would like to just say a couple of words that are reflected in the statement.

First of all, I'm really delighted to be here. I'm delighted to be back at the Air Resources Board, and I'm delighted to be working with this Committee and with the rest of your colleagues on the implementation of California's landmark

clean air and global climate legislation. We have a very strong collective interest in getting this done right. I know that you do, and I do as well.

And we have some important precedents to build on that you've alluded to in the past, in the successful implementation of many very strong and difficult bills in California.

We have a staff at the Air Resources Board of extraordinarily talented men and women, with all kinds of technical expertise and experience.

One of the reasons why I was happy to accept the Governor's invitation to come take on this role is that I know many of these people. Some of them I even participated in hiring, and I trust the implementation of this critical legislation to them. And it's really an honor to be in a position to be able to lead their efforts at this particular time.

I think the process that was set forth in AB 32, that tells the Air Resources Board what it's supposed to do, is really pretty clear. I believe that the Governor and his staff are committed to following it.

In case there was any question about what the text of the legislation says, we have the Green Book here, which now contains the full text of AB 32, as well as -- as well as other supplemental materials that people can refer to. And I know your staff has copies of this as well. I carry it with me wherever I go.

CHAIRMAN PERATA: This is the legislative

equivalent of holy cards.

[Laughter.]

MS. NICHOLS: Well, it's the text, so here it is. And I've read it, and I think it's a fine piece of legislation. And I'm looking forward to working with you to make it a reality.

The world is watching what we're doing here. We have to do it right. And we have to do it in a context that doesn't just treat this as some separate new agenda, but really integrates the efforts at reducing our climate emissions, along with some very aggressive and, in some cases, difficult clean air work that we have to do, as well to protect the people's health.

So, I'm ready to get to work. I started literally the day that the -- that the Governor announced my appointment, and I'm looking forward to answering your questions.

CHAIRMAN PERATA: Thank you.

The Governor, when he came into office, he has made global warming, I think, in the vernacular, but cleaning up the pollution by 50 percent by the year 2010.

As you come in, how would you characterize or assess the progress that we're making towards that?

MS. NICHOLS: Well, I think the Air Resources Board has been steadily moving forward towards the goal, and they have certainly been cranking out rules, and SIPs, and working with local districts.

But frankly, I think they need a new infusion of

energy. I think there's a need for a more aggressive approach, especially with respect to the San Joaquin, and a more cooperative approach towards working with the South Coast District, which still has some very serious issues as to how they're going to get to attainment on the fine particle standard, as well as, you know, continuing issues with ozone.

Even though we've made huge progress in recent years, we can't rest on our laurels, and we have to try -- try some new things, as well as renew our commitment to -- to the goal.

CHAIRMAN PERATA: Let's talk some specifics.

Characterize, and we have a number of Members of our caucus representing the Central Valley, and -- are you in the Central Valley?

SENATOR ASHBURN: Yes.

CHAIRMAN PERATA: He's in that -- characterize what's going on in the San Joaquin area?

MS. NICHOLS: Well, as everybody knows, the local board, the regional air board has produced a plan which calls for reclassifying the region as an extreme nonattainment area based on the fact that their existing rules and regulations, and the ones that they're working on, can't demonstrate attainment by the statutory deadline.

Legally, that is the process that's called for under the Clean Air Act. But as many people have observed, it also gives them an extension of time to meet the standards.

I have stated, and I believe this is true, that legally what they did was correct. That is the process that's

called for under the Clean Air Act.

But I want to assure you that I don't believe that that's acceptable. I think that asking people in the region to breathe the quality of air that they're breathing now for eleven more years is not an appropriate thing to do.

Before I got there, the Air Board had already committed, and they now have actually formed, a task force of their own to try to identify additional measures that could be included that could move this process forward faster.

I have been asked whether the board would consider not submitting or not approving the San Joaquin plan as a way of forcing the issue and keeping the heat on them to -- to move faster. And I have not made a decision to ask the board to do that, but I'm willing to look at whether that would be a way that we could make sure that people are keeping their eye on the ball here.

I believe that there's a general recognition on the part of the political establishment, the members of the local board, that they need more measures, but I think there's some -- there are some issues in terms of how we're going to get those extra tons.

CHAIRMAN PERATA: What would be the consequences if you took that action with regard to the federal government?

MS. NICHOLS: Well, if the -- if a plan isn't submitted, we go through the cycle of litigation, basically. EPA ultimately could sanction the region by withholding highway funds. I mean, that's the ultimate sanction that they have, as well as not approving permits for any major new facilities, or

renovations of existing stationary sources. So, those are the -- those are the big hammers that EPA has if they don't get an approvable plan within a timeframe.

But, you know, there's always some periods of months, and sometimes even stretching on further than that, where these things are under discussion and review. And I think we just need to make a quick assessment of what's the best -- what's the best way to push this forward.

I definitely want to send the message that business as usual is not going to be acceptable.

CHAIRMAN PERATA: What about South Coast? Would you characterize what's going on there and your concerns?

MS. NICHOLS: Well, my major concern has been the high level of antinomy, disagreement, between -- that existed in the past between the Board and Executive Officer of the South Coast District and the Air Resources Board's former Executive Officer.

I've been speaking to friends in the South Coast, including their Executive Officer, Barry Wallerstein, about some of the specific measures that I think we can take to try to get the relationship back on track, and to get moving on some of the assistance that they need.

South Coast is a big, competent agency. They also have a lot of expertise and enthusiasm for their job, but they don't have all the tools that they need to do what needs to be done.

They need the help of the Air Resources Board to provide them with mobile source regulations that are more

aggressive than what's been done in the past. And we're just going to have to step up to the plate and find ways to help them out.

CHAIRMAN PERATA: How would you view, from your observation if not from first-hand contact of late, the relationship between CARB and the political infrastructure of the various air boards throughout the state?

MS. NICHOLS: Well, as it happens, there was a meeting of the Air Pollution Control Officers Association, which is the statewide group of the -- of the appointed heads of all of the air boards of the state, last week. So, I was -- I was delighted to be invited to have dinner with them, and chat with them about how they see the relationship with CARB. It was a delightful evening.

There's a lot of enthusiasm for some things we can work on together, including a desire, I think, on the part of many of the air boards in the state, and their -- the members of the boards, local elected officials primarily, to be more involved in helping to implement AB 32. They're getting questions from their jurisdictions about what can be done at the city level, at the county level. How they should be factoring it into their transportation and land-use plans.

And I'm delighted that they're asking those questions. I don't have the answers for them yet. I don't think Air Board itself has all the answers even within state government. But with the assistance of other agencies and the Climate Action Team, I think we can have a very productive working relationship around those issues.

CHAIRMAN PERATA: Do they generally accept that you're the big dog in the kennel?

[Laughter.]

CHAIRMAN PERATA: Not an artful way of putting it.

[Laughter.]

MS. NICHOLS: Well, that's an interesting question.

I think that under the Federal Clean Air law, under state law, it is generally accepted that CARB has a role, an important role not only in submitting plans that the local people develop to EPA, but actually reviewing those plans and, where necessary, adding measures to them, or pushing for statewide regulations where statewide regulations are needed.

And I think they -- I think they recognize that inevitably, the Air Board is going to assert itself and perhaps get some of the attention and the credit, at least when it comes to mobile sources.

But I think they also feel proud of their own work, and they want to be partners. And it's important to try to make sure that they are, and that they are given recognition for their work as well.

CHAIRMAN PERATA: Let's talk a little bit about AB 32, since that's why you're here, and why we're having this hearing today.

That was a very painstakingly negotiated law that was negotiated among the two houses and the Governor's Office. It creates the climate program at the Air Board and gives it

assignments each year to implement the law. It is, therefore, prescriptive.

In the Senate, we insisted -- and we were the second house to have this bill, so what you see here is largely reflective of the fingerprints and stamps that we put on this -- we were very, very interested in early action measures, or early action regulations; regulations to start the job immediately.

As elected officials, we often times are accused of: Don't just stand there; do something. Where now, in fact, lots of people are saying: What are you doing?

And we didn't want the impression left that the provisions of the early action were optional. These are mandated in law.

There was also the tension between early action measures, enforcement provisions, and the so-called market mechanisms, which I am not ashamed to admit, I never heard of before the bill, or cap and trade. Cap and gown, yes; cap and trade, I don't know.

And basically, the reason that we made the law the way we did was, and we wanted to acknowledge cap and trade as one of the market mechanisms, but we want to be sure that it's understood that it is not an "equal to." We don't have parity. They're not the Scales of Justice.

One is mandatory; the other is both elective, or optional and subject to further conditions.

Unfortunately, a lot of the conversations that are out there in the political marketplace suggest that they are competitive and equal.

And I'm sure that as you've read your little Green Book, it's fairly clear that that may be an overly enthusiastic misreading of the book. But nevertheless, it's out there.

Once that law was passed, and I don't want to make this an unfair characterization, but I don't think the signature of the Governor was dry before the administration was -- there was a slew of executive orders. We were setting up advisory committees and other actions that were taken that at best seemed to contradict and, in some cases, appeared to contravene the very purpose of the law itself.

So, your role, I believe, as you come in here, at least observationally from the Legislator's point of view, is to sort this thing out.

So, I'd like to ask you, CARB took actions at their last meeting that resulted in the decisions that were made by the Governor's Office, and by Mr. Sawyer, and the Executive Director.

I believe that you have been quoted -- and since it was a quote, I don't necessarily believe it's accurate -- but that you weren't in total disagreement in terms of what options that they were faced with.

Does that ring a bell, or you didn't say that?

MS. NICHOLS: I'm not sure. There's a -- there's a number of different questions that are embedded in your comments there.

CHAIRMAN PERATA: Answer them all.

MS. NICHOLS: I'll try, or at least I'll take a

stab at it.

CHAIRMAN PERATA: Choose the ones you want to answer. Just be like us.

[Laughter.]

MS. NICHOLS: You won't be surprised that, you know, I haven't actually sorted everything out, but I think I have sorted out at least the basics of what needs to be done next.

First of all, I understand completely that the early action program was a key piece of what -- of what the Legislature wanted to see happen. And I know the Senate was particularly active in getting that inserted into the bill.

CHAIRMAN PERATA: [Pointing to Speaker NUNEZ] Ms. Nichols, I'll just take a moment to introduce you to the author of the law.

[Laughter.]

MS. NICHOLS: We've met. Thank you.

CHAIRMAN PERATA: Go right ahead.

MS. NICHOLS: So, when the Air Board adopted the three measures that are currently the three -- the three measures that constitute the early action plan, that was a start.

But my view is that that's not the end of it. And I've asked the staff to go back and look at the other measures that were on the list, and to see whether there aren't measures that can moved up onto that list quickly, and before the end of the year, certainly, and hopefully earlier than that.

I would like to see us significantly expand the list of measures that we commit to actually have in place and under way by 2010, because I agree with you, that the public does want to see action. And inevitably, the question is, you know, is this really enough?

On the other hand, I also agree with your statement that there's a tension between putting measures onto the early action list and going through the deliberative process that needs to be done for the 18 months scoping plan that tells us how we're going to get to the ultimate goal of AB 32, which is the rollback of emissions, 174 million metric tons or so, that we've got to get out of the air.

And I do want to say that, you know, in my history with the Clean Air Program, both at CARB in the past and at U.S. EPA when I served there in the Clinton Administration, I have really come to be a believer that the process, which includes the sound technical basis for rules, and the opportunity for people who are going to be affected by those rules, both from the public sector side, the community of environmentalists and activists, and also from the point of view of the regulated industry, need to be heard of because they do have ideas that improve these rules. So, there is a tension between those two -- two activities.

And even though we're hoping that when the budget passes we'll be able to go out and bring in some wonderful new people to help us with these tasks, there's -- to some degree there's always going to be finite resources. And we just have to do both of these things. And we have to do them well.

With respect to your comment about the market, and the role of markets, I don't think you're the only person in the State of California who has questions about what a cap and trade program is. And frankly, the Market Advisory Committee process, in the report that they give us, shows that there are a myriad of details that economists and experts can debate about: What, how, where, when, and, you know, what role the whole -- the whole program could play.

I am a believer that market mechanisms -- which is another one of those technical terms that covers a multitude of things, but basically involves something other than a prescriptive rule that defines exact amount of emissions that each and every machine or tailpipe is going to emit -- will play a role ultimately in the implementation of AB 32, but only after we have laid out the program with the regulations as the basis for this rule.

It's -- it's only useful, but it has proven itself to be useful. That is, cap and trade, and other market-type programs have proven themselves in the past to be useful in moving you further, faster than you can go with regulations. When they can do that, that's when we want to embrace them. Otherwise, there's no point of even talking about it.

But I realize that there is consternation out there, particularly at the grassroots level in many communities that have already had to endure unacceptably high concentrations of pollution, that somehow we're going to use this new scheme as a way to, perhaps, make progress on global air pollution but

ignore their legitimate interests.

And I want to assure you that as long as I have anything to do with it, that's not what's going to happen.

CHAIRMAN PERATA: You've exactly captured the concern. I'm happy to hear you say that, because there's two things I know for sure. People want to get things done immediately, and they're not going to like what they're going to have to do. And those are both sides of the coin.

But when we speak about the market mechanisms, cap and trade, it sort of devalues. It looks like a con. I know it's not intended to be.

And then, you know, when it starts showing up on the Comedy Channel, you're in trouble, or when Jay Leno starts to talk about it.

And buying carbon credits so you can drive your twelve-cylinder V-8 around -- twelve-cylinder V-8, that would be good.

[Laughter.]

CHAIRMAN PERATA: None of you were paying attention because I had to repeat it.

[Laughter.]

CHAIRMAN PERATA: So, your characterization is correct. And from a political point of view, that was the thrust of AB 32, and get the low hanging objects off the tree, and then work. We have to do them simultaneously. That was the intention.

It was not to say that it wasn't important, but

to do things so that if you live in the Central Valley, you can go to your constituents and say, "Maybe your third child born will not need an inhaler."

Do you think that AB 32 two was the most far reaching legislation that's been enacted to date in the country? Because we've been saying it is, and I just want to know how you feel about it.

[Laughter.]

MS. NICHOLS: Well, you know, I haven't researched the laws of every other state, but as far as I know --

CHAIRMAN PERATA: Texas, I know, is really pushing hard.

[Laughter.]

MS. NICHOLS: Yeah, there are other places that are trying to copy California, and some that have, I think, by executive order. Certainly there are other states that are signing up to be part of our -- what was the California Climate Action Registry, and is now The Climate Action Registry.

In fact, it seems as though almost every other day, you see some mayor, or a group of mayors, or governors, signing pledges to reduce carbon.

But I don't believe there's any piece of legislation that has the teeth to it that AB 32 does. And that puts us in a unique position, and it does give us a unique responsibility in the world, particularly in lieu of the fact, or in view of the fact, that is, you know, we're only a small fraction, two percent is the number that's used, of the

worldwide emissions. So, even if California were to go away, the problem of global warming, the build up of gases in the atmosphere would not be reversed.

And that is what makes it extremely important that our implementation program be one that other countries are going to want to sign on to. Because if it's not, we will have taken on a cost and the burdens, as you say, and we won't get to the results.

CHAIRMAN PERATA: When we start going to Nigeria, and Bolivia, and start talking -- or Brazil -- and start talking to them, as we have with our Canadian friends, maybe we'll have really arrived at something.

But we have set the bar pretty high.

MS. NICHOLS: We have.

CHAIRMAN PERATA: I think one of the greatest measurements of how the intellectual world views California is reading the economists. And California, the administration got very high marks early on for what we were doing.

And now, all of a sudden, it's like it may not be the myth of Sisyphus, but it's pretty close, in the way they're beginning to look at how difficult it is to do what we say we're going to do.

MS. NICHOLS: I read that economist issue, too. It was very sobering.

CHAIRMAN PERATA: Yes, and I think accurate.

So, your sponsor has given you an enormous, pressure-filled opportunity here. And I bet that as soon as your granddaughter's born, you're out of here. You'll figure

there's a much better way to spend the rest of your life.

[Laughter.]

MS. NICHOLS: I am planning to spend weekends in Los Angeles. I'm not going to give that up.

CHAIRMAN PERATA: That's not what I said would be a better way of spending you life, spending the weekends in Los Angeles.

[Laughter.]

MS. NICHOLS: [Looking at SENATOR PADILLA] Are you going to defend me?

[Laughter.]

CHAIRMAN PERATA: I'm a little upset with L.A. They came to San Francisco and won three games in a row.

[Laughter.]

CHAIRMAN PERATA: Thank you.

I'd like to defer now to our Vice Chair.

SENATOR ASHBURN: Thank you, Mr. President.

Welcome.

MS. NICHOLS: Thank you.

SENATOR ASHBURN: What did the Governor say to you?

MS. NICHOLS: He thanked me for --

CHAIRMAN PERATA: First he said, "Are you available?"

[Laughter.]

MS. NICHOLS: He thanked me for accepting the challenge and for coming to work with him.

We had a really -- I can only describe it as just

an excellent conversation about his hopes and ambitions for the Air Board and for the program. His desire to -- to place California in a position where I, and he, and all of you will have a legacy of accomplishment with AB 32 and other environmental programs as well, but he particularly was focused on AB 32.

He gave me every assurance that I need that I would have the support that I need and the encouragement to go out and clean up the air, and be active.

And that's what I'm here to do.

SENATOR ASHBURN: That doesn't sound very specific. And when you consider that the call came just a few hours after he had fired, apparently, Dr. Sawyer and the Executive Officer resigned in the wake of that, you must have had some questions for him.

MS. NICHOLS: I have -- I had several conversations with Linda Adams and Susan Kennedy prior to my conversation with the Governor about all of the events that led up to the -- to the change, and the need for a new Chair of the Air Resources Board, and a new Executive Officer.

I followed the Air Board not on a day-to-day basis, but I've been in academia for the last three-and-a-half years. And many of my colleagues work with the Air Resources Board. They do research on projects.

And I've also been on the Board of the California League of Conservation Voters, which follows the Air Board very closely.

So, I was aware of the fact that -- that there

were problems there. And I think that they're not really unexpected that there should be -- that there should have been a need for a change, given the importance and the high stakes that are involved in this program.

Bob Sawyer, who is an outstanding scientist, he has many accomplishments in the air program under his belt, but he didn't have a relationship with the Governor, and he didn't have an interest in, as he said very openly, in the political side of the job.

And as Senator Perata indicated, the implementation of these laws is an intensely political activity as well as a technical one. If you can't get the public to agree that the programs that we're asking them to get involved in are things that they want to go along with, we don't have a program.

And it's not just a matter of selling. We all know that we have to have actual activities, projects, programs, rules, regulations that people are being subject to, that -- that require the acceptance of the governed. And that is a political process, and it's going to require all of us to -- to be engaged in it.

SENATOR ASHBURN: The specific criticism that comes from Dr. Sawyer is that he was being pressured politically from the Governor's Office that, while the rhetoric and the language of this new law were one thing, that in the implementation, the Governor, and the Governor's Chief of Staff, and highest level members of the administration were pressuring to do something other.

Did you discuss that at all?

MS. NICHOLS: Yes, and I'm satisfied that that's not the case.

I think that there were undoubtedly some communications glitches, to put it mildly, along the way, but I don't believe that there is any person on the Governor's staff who is under any illusions that their role is to slow down, interfere with, weaken, or delay actions that are going to be taken to clean up the air and to reach the goals of AB 32.

I think, like any person in the Governor's Office, they will be visited and get inquiries from constituents from many different areas, probably including the Legislature, about specific rules and regulations, and requests to find ways to make them less burdensome for one area of the state, or one sector.

And I think those are legitimate questions, and there have been to be answers. We have to be able to justify that the program we come up with, and the rules that we're asking people to comply with are the best we can make them. We don't want them to be any more burdensome than they absolutely have to be.

But at the same time, at the end of the day, you have to be able to look people in the eye and say, "This is what we need you to do." And they have to be convinced that that really is what needs to be done, or they have to come back and undo the whole program.

And that's really -- it's going to take all the energy and effort that we can muster to make this happen.

And so, I expect that there will be questions, from time to time, from people in the Governor's Office about why we're doing it this way, and have you thought about that, and what's the answer, and what's your technical support. And I think the Air Board should be prepared to give those answers.

But I think that's a very different thing from being asked to slow down, or not undertake certain measures.

And I am completely, as I said, completely satisfied that my mandate is to speed up, not slow down.

SENATOR ASHBURN: One of the popular theories going around the Capitol -- and this is a place where we deal in rumor and theory -- is that you provide for the Governor a degree of cover; that in pursuing a more market-based approach to implementation of AB 32, that because of your credentials, you can do things that Dr. Sawyer couldn't get away with, to push harder in that direction as opposed to the regulatory approach.

Have you heard this, and how do you feel about that?

MS. NICHOLS: Well, I guess I've always been an admirer of the "Nixon Goes to China" theory about how to get things done.

You know, the Governor certainly knows that I'm a Democrat. He knows that I'm a person with a reputation in the environmental community for having accomplished some important things in the air program. And I guess I bring that to his administration.

But the reason why I'm here is because I believe

that in order to achieve the goals that we've set out for ourselves, that we really are going to have to call upon all kinds of ideas for how to -- how to get there, that we can't do it with only the types of regulations that the Air Board has been able to do so effectively in the past. That simply by capping, or setting emissions standards for individual sources -- whether it's, you know, utility boilers or whether it's cars and their tailpipes -- it's still not going to get us to the goal.

And we're going to have to come up with new ideas for how to get to the rest of it, working with all the other sectors that I've described. And things like energy efficiency, and new technologies are going to be what's going to get us there. And that's the exciting part of this, from my perspective. And I will work with anybody and everybody to try to make that happen.

So, if that means that I'm giving cover to the Governor in some respect, well, if he's backing that view, and he certainly knows that that's my view, then I think that's where I want to be.

SENATOR ASHBURN: Your answer is very interesting, especially as it relates to the San Joaquin Valley, because the public comments were that Dr. Sawyer fell in disfavor with the Governor and the administration because of the specific action that he undertook with respect to the San Joaquin Valley Implementation Plan.

Do you think that the San Joaquin Valley can meet the standards for attainment within the timeframe prescribed in

that plan?

MS. NICHOLS: First of all, I will answer the question but before I do, I just want to say that in a conversation that I had with the Governor, he was very specific about the fact that, you know, he read in the newspaper that the Air Resources Board was going to give the San Joaquin Valley eleven more years to meet the air standards, and he was mad. He was mad both because he didn't know that this was about to happen, and because he didn't think it sounded like the direction he wanted to see things going in.

And because, as the person who's been representing California's interests in going back to Washington and talking to the Bush Administration about our need for them to speed up action on our waiver under AB 1493, the Pavley vehicle legislation, he felt that this was sending a totally contradictory message: That on the one hand, we want you to speed up, but on the other hand, we want to slow down.

And he found that inherently contradictory, and he wasn't happy about it.

I think his position is pretty reasonable.

Now, I explained to him the issue about the bump up, and how when you actually become a more extreme air quality area, you actually take on more responsibilities, and it wasn't really the same.

But not surprisingly, he wasn't really happy with my answer, either. I mean, he believed me, that I was quoting the law correctly. He gave me that -- that credit, but he still wasn't happy about the decision. And he definitely indicated

that he wanted to see what we could do to move things along faster.

And so, within the context of the laws that we've been given to work with, that's what we're going to try to do.

Now, you asked the question, do I think they can meet the attainment deadline, and the answer to that is, as of right now, of course they can't, because they don't have the tools there to do it with. There are some things that Air Resources Board is going to have to do. We've got rules on our agenda, including -- coming up at the July meeting with respect to construction equipment and others. And, you know, every one of those is going to be painful because they're going to cost money and have an impact on -- on important services.

There's also a need to take a look at what kinds of new technologies and other programs may be out there for dealing with the stationary sources. And it's going to take us a little while before we can get that whole program put together.

But I definitely would like to see us move that deadline up further than eleven years if we can.

SENATOR ASHBURN: I'm not sure what that answer was. It sounded like you said in there that you don't think that deadline can be met?

MS. NICHOLS: I don't think that, with the level that the district -- that the San Joaquin is classified at today, and with the tools that they have in their adopted regulations, or regulations that are on the -- on their plate right now, they will not meet the deadline.

SENATOR ASHBURN: Which is exactly what Dr. Sawyer said.

MS. NICHOLS: Correct.

SENATOR ASHBURN: So, if he was fired for saying that, and you come into office taking the very same position, then what's the difference?

MS. NICHOLS: Well, I can't comment on what happened before I got here.

SENATOR ASHBURN: I respect that.

MS. NICHOLS: So, all I can say is what I believe is my mandate going forward.

SENATOR ASHBURN: I represent the San Joaquin Valley.

MS. NICHOLS: I know.

SENATOR ASHBURN: I'm privileged to represent the entire southern San Joaquin Valley area, except for the little piece that my colleague has in Tulare and Kern County.

You know, there are differences in the areas of our country and our state based on natural features that are beyond the control of humans. Mountain ranges, inversion layers, the meteorology, the geology, create a different condition in the San Joaquin Valley than are created, for example, in the Bay Area, where you have a natural cleansing that goes on with the ocean breezes coming in and out.

We have trapped air. We have a tremendous percentage of our air which is contaminated by imported pollution from Oakland, and Monterey, and San Francisco; and that's documented.

So, why should the San Joaquin Valley be treated differently? Why should the people in the San Joaquin Valley in the construction -- we're also blessed by God in the San Joaquin Valley to be the richest agricultural region on earth. You know, there's something remarkable happening when you apply water to the soils in the San Joaquin Valley. No place on earth is more productive.

We have naturally occurring oil and gas in the San Joaquin Valley. We have rich mineral deposits.

So, these things are beyond the control of humans. So, why should that area pay a higher price than other people in California?

MS. NICHOLS: Well, Senator I guess I have two comments to that.

One is that, you know, back in the late '60s and early '70s, Congress made the decision to establish a -- a basic level of air quality that every human being everywhere in the United States would have a right to, and they called those the National Air Quality Standards. And the idea was that because states and regions do compete with each other economically, and they do have different conditions, there would be a tendency for them to compete over who could have the dirtiest air in order to achieve economic growth.

And Senator Muskey and others at that time made the decision that that was not acceptable in this country, and that we would -- we would try to bring every part of our country up to a certain basic level of healthful air that would be protective of even the most sensitive people.

At the same time, they also recognized that different areas faced different challenges, as you said. And the way they dealt with that was by creating a mechanism under which people could have more time if it was more difficult for them. So, you would trade-off the time and the costs, and make it a little bit easier for people who were going to have to pay more, or do more difficult things.

I believe that that was basically a correct -- a correct way to go about dealing with this problem.

At the same time, I have to tell you that when I was at EPA running the air office there in the Clinton administration, I was the instigator of a policy which I believe we are now being sued by, or about to be sued by, called the Natural Events Policy, which said that if a region is tipped over the edge into nonattainment, or they're moved into a more serious category because of things that they really don't have any control over, like forest fires, for example, that those would be discounted. In other words, that you wouldn't make the local region be responsible for things that they truly could not fix.

Now, some people would argue that if we had better forestry policy, we'd never have forest fires, but I don't believe that, so put that to the side.

But assuming that there are things, like wind-blown dust in certain areas, that are just not within the realm of what's -- of what's able to be controlled by any kind of technology or administrative practice, those things are not held against an area. They are not required.

And some people in the environmental community think that's wrong. They think that we should have to deal with those issues as well.

So, I guess I'm kind of a practical person in this regard. I think we should do whatever is feasible to do technologically, but that ultimately the goal of clean air, and achieving those health standards, is where we all ought to be aiming.

SENATOR ASHBURN: I've been on the air board. And it's those practical realities that make it different in the San Joaquin Valley than other areas.

You mentioned, you know, fires. The dust that occurs, we're talking about a desert. And unless you put water on the soils, you're going to have dust and particulate matter.

We had standards for particulates, and then California jumped ahead and adopted a standard that is, you know, beyond that which can be reached in the San Joaquin Valley.

So, if you keep moving the bar ever higher in what you're trying to achieve, of course you're never going to be able to get to the goal.

And again, these factors -- the wind-blown dust and dirt in the San Joaquin Valley -- is beyond our control.

And I might mention, that's why it is so frustrating for San Joaquin Valley residents with respect to the water issues, because at the same time that we hear that it's important that we preserve farmland, and that we put the brakes on development activity -- residential, commercial, industrial

development -- we are diverting millions of gallons of water into the ocean. And we are taking productive farmland out of production for the sake of endangered species protection, which seems to be, you know, contrary purposes.

You can get air quality attainment if you apply water. And we can keep farmland in production, and open space, which are all desirable environmental goals, but as you go over here and meet another requirement of the law to protect endangered species, to grant them ever-lasting life through legislative action, that takes away that water resource.

And so, why shouldn't in regulation the air regulator be able to say that the lives of people, the protection of kids from asthma, is a higher calling under the law, clean air laws, than the protection of endangered species? So therefore, federal judge and others, we're going to pull that water back, and we're going to keep it in the San Joaquin Valley so that we protect kids from asthma.

Why don't you do that?

MS. NICHOLS: Are you going to make me the Water Czar as well as the Air Czar?

SENATOR ASHBURN: I mean, I wouldn't mind it if you agree with me.

[Laughter.]

MS. NICHOLS: Okay. Well, if I had that power, I think I might do something with it.

But as far as, you know, one point that you made about the wind-blown dust, you know I'm from Los Angeles. Until recently, I was serving on the Board of the Los Angeles

Department of Water and Power, which is spending hundreds of millions of dollars to put water on the Owens dry lake.

SENATOR ASHBURN: Which I represent also.

MS. NICHOLS: So, I'm very familiar with the need to apply water sometimes to deal with the wind-blown dust. But that dust was a toxic air contaminant that does affect people's health, so we had no choice.

SENATOR ASHBURN: But it also is beyond the control of man.

Thank you very much.

CHAIRMAN PERATA: Senator Padilla.

SENATOR PADILLA: We meet again.

MS. NICHOLS: Yes.

SENATOR PADILLA: Welcome.

MS. NICHOLS: Thank you.

SENATOR PADILLA: I both want to recognize and share with my colleagues that we've had an opportunity to work before, not just in your capacity as a former Commissioner at the Department of Water and Power in Los Angeles, but you were one of my appointees to the Measure O Oversight Committee, when I was one of the individuals being trusted to ensure that the half a billion dollars voter-approved bond funds were spent responsibly in a way that protected and improved the water quality in Los Angeles.

And today I look forward to the similar dialogue and relationship as it pertains to improving our state's air quality.

So, it's already been recognized, but I

appreciate the recognition that the problem is particularly acute both in the Central Valley as well as the Greater Los Angeles area with the South Coast Air District.

I also want to recognize that the issue isn't partisan. It's not nonpartisan. It's not pre or post partisan.

It's a public health issue, and it affects everybody equally in Los Angeles, because that's where my district is, and what I'm most familiar with. You know, we have freeways that run by some of the wealthiest neighborhoods. Brentwood's one example. But we also have too many freeways that run through some of the poorest neighborhoods.

And so, kids whether it's playing tennis in the backyard of a mansion, or playing on blacktops at very urban schools, are breathing that bad air.

That's where I'd like to begin some of my questions today.

You know my district in the San Fernando Valley very well. My area alone is home to the 5 Freeway, the 101 Freeway, the 405 Freeway, the 118, the 110, and the 210, and so forth.

And what most people don't know what CARB is, they certainly know what bad air is when they're breathing it everyday.

So, part of my questions and concerns is, how do we go about these various techniques and strategies to improve air quality, while ensuring that we're going to be equally protective of and concerned with communities like Pacoima and Sun Valley?

The Air Resources Board obviously plays a critical role in cleaning the air. And as you're entering this position, you are, too, aware of the recent allegations that have gone back and forth between the administration and ARB officials that my community have called into question the integrity of the board.

Just last week at the federal level, former U.S. Surgeon Generals Koop, Carmona and Satcher testified before the House Oversight and Government Reform Committee regarding the declining status of that office due to undue political influence. And their testimony was particularly troubling because it sounded all too similar to testimony from top ARB officials here in this Capitol last week as well.

We can't afford to sacrifice air quality for political expediency. And you're coming into this job not just, in my opinion, to clean up a mess, but to also restore the integrity of the board.

And here's my first question: How will you ensure that the administration is at an appropriate arm's length to ensure the integrity of the board?

MS. NICHOLS: Well, Senator, I think that I come into this job with a record of having worked successfully through some very tough times, and balanced those pressures in a -- in a way that allowed us to move forward.

I don't detect anywhere, as I've said before, anywhere in the -- in the mandate that I've been given any desire to politicize or weaken what makes the Air Resources Board the unique international agency that it is.

And upon my arrival there, I have been greeted by old friends and colleagues, as well as new ones, who have assured me that they are not in a state of turmoil, that they are more than ready and willing to get on with their work. They're excited about the challenges that face them. They know they need some additional resources and help.

But they also know that they need a Chair who will be actively engaged in not -- not so much telling them what to do, as in talking with constituents, and helping to make sure that their work is being properly communicated to the outside world.

There has -- there's been a period of time in which I think the Air Board just has not been as active as it should have been in reaching out in all kinds of ways, not just to local air districts, but to communities, to mayors, others, to talk about what -- what we're up to, and what role we see for them in these efforts.

Under AB 32, the regulatory program, as I said before, I think is ongoing, and it's doing its work, but there needs to be a sense of assurance that this is important work.

And so, I think my job is to be, in effect, a cheerleader for the Air Board at times when they need that in the outside world, as well as bringing back messages that maybe sometimes they're not communicating as effectively as they should be about why they're taking the kinds of measures that they're taking. It's too easy to sink into kind of just talking to your colleagues inside the building, rather than -- rather than moving out and talking to people in the community.

So, I believe that that's what my mission is to do there. And I have -- as I said before, I couldn't ask for a better set of responses than I have gotten from everyone I've talked to, here and on the other side of the building, about -- about that as an approach to what we need to do.

SENATOR PADILLA: What could we, as the Senate or the Legislature, anticipate from you should you ever feel the undue pressure?

MS. NICHOLS: Well, you know, as you know I've served several times as a political appointee. And I've always believed that you owe a duty of loyalty to the person who appointed you, or the entity that appointed you, to the extent that you tell them first if you have a problem before you go talk to the press, or go talk to other people.

And so, that's what I would do if I felt that I was being inappropriately pressured, or being given what seemed to be requests that were inconsistent, or wasn't able to, you know, figure out whether I had the mandate to do what I needed to do. I would go back and check.

But if that failed, or if I got the wrong answer, then I would leave. It's the only honorable thing to do.

But that isn't really the world that I think we're in. I think we've got a few years here to get this law implemented, and I think everybody wants to do that.

SENATOR PADILLA: And believe me, we all share your enthusiasm for implementation of the law as well.

One of the first opportunities, I think, we have is also coupling AB 32 goals with the infrastructure bonds that

were approved this last year.

Should CARB incentivize reduced emissions at construction sites by making cleaner construction equipment a condition of state infrastructure bond funding?

MS. NICHOLS: At the moment, the Air Resources Board doesn't have that authority in terms of conditioning the infrastructure funding. I know it's under discussion at the moment. And I'm not -- I have not been a participant in, because I've come in too late to know the state of discussions of, you know, where and how that authority would take place.

But I can tell you that we're focusing on getting cleaner construction equipment. There's going to be a hearing in July where we're going to be taking action on a rule which I think will be a very progressive rule to move us in that direction. And if we can -- if we can do our part in this, I'd be happy to do that.

SENATOR PADILLA: You said that hearing is before end of the month?

MS. NICHOLS: It's July 26th and 27th.

SENATOR PADILLA: Next week.

MS. NICHOLS: Next week.

SENATOR PADILLA: You're aware of discussions. You're coming up to speed pretty quick here for setting rules and regs --

MS. NICHOLS: Yeah.

SENATOR PADILLA: -- in a little over a week.

MS. NICHOLS: Well, that rule was -- it was supposed to have been acted on in May. It was scheduled to be

acted on, but there was a lot of testimony that was presented that suggested that that was -- that the way it was presented was going to be extremely expensive and potentially be too burdensome for some people in that industry to comply with. And so, the board took more time to consider some additional data.

But I've looked at the record, and I believe we're going to be able to take action and do something that will move us a very long way forward at -- at our hearing.

SENATOR PADILLA: Okay.

Coming back to the issue of the relationship between the Air Board and local air districts, local air districts say their State Board should and could do more, and the Air Board's saying: We're doing everything we can.

I think part of it comes from the local districts being mandated or required to implement any feasible technology or strategy to improve air quality; whereas, the State Board is only authorized to do so, but not mandated to.

Do you think the Air Board is doing everything that it possibly can? What's your opinion on the authorized versus mandated difference in the law?

MS. NICHOLS: It's an interesting question. I mean, the tension between the local agencies that have to put the plans together, demonstrate attainment, and that have the first-line authority to deal with all the industries, all the permitting of stationary sources, versus the Air Resources Board, has been in existence since the Board was created.

And I lived through a period of it in the past, as you know, when I joined the Air Resources Board the first

time around. There were only five members, and during the time that I was there, it was expanded to seven, and then it went to nine, and now it's at eleven, precisely because local air districts demanded that they get a seat on the Air Resources Board to try to deal with this built-in tension between the stationary sources and the -- and the agency that controls the mobile sources.

But it remains an area where it's certainly possible for people to point fingers at each other, and each to accuse the other of not really doing everything that could possibly be done as the measures get more expensive and more difficult in many cases.

I think that the Air Resources Board, to answer your question directly, is not doing everything that it could be doing in all of the areas where it has jurisdiction, and that it is time to either accelerate or go back and look at new technologies that are out there.

And I'm very pleased to see in one of those areas was the low carbon fuel standard that was just adopted. That was done before I got here. Implementing it is going to be a challenge, but it is a huge step forward in terms of creating a new -- a new push for cleaner fuels in California. And that will have major benefits for AB 32 implementation, but it should also have benefits in the area of air quality as well if it's done right.

But should the Air Board be mandated to do everything that's technologically feasible?

I don't want to duck that by saying that it's a

political question, but in the past, it has always been -- the Air Board has always believed that in addition to feasibility, they had to consider things like availability of various kinds of vehicles for public, and other aspects of that --

SENATOR PADILLA: You said there were appropriate considerations?

MS. NICHOLS: There were other considerations besides just technical feasibility.

SENATOR PADILLA: Right. Economics, cost effectiveness --

MS. NICHOLS: Right.

SENATOR PADILLA: -- et cetera. But given appropriate consideration to those factors, should the Air Resources Board be required to implement those that meet the threshold of the tests?

MS. NICHOLS: My initial reaction to that is, yes. I mean, I think that's what we -- I think that's what we should be doing.

SENATOR PADILLA: Okay.

Coming back to AB 32 specifically, do you agree with the following statement that many of the same activities, such as cars and trucks on the road, generating electricity from fossil fuel sources, don't just create smog but also specifically cause global warming?

MS. NICHOLS: Yes.

SENATOR PADILLA: And if that's the case, the steep reductions in diesel pollution from garbage trucks and buses sort of give us a three-fer: they reduce localized

pollution; they reduce greenhouse gases; and reduce smog-forming compounds; correct?

MS. NICHOLS: Yes. I mean, the only -- the only hesitancy I say I would have about saying that is, that in the past, some of our standards didn't really take account of fuel differences or fuel economy differences. Because, you know, when we first began regulating air pollution, nobody was really all that concerned about fuel economy. So, it wasn't really a factor in the some of the early programs.

And nowadays, because of global warming concerns, we really have to think holistically, and not just apply technologies that might cut tailpipe emissions but would end up actually creating a fuel economy penalty. We have to think about that as part of the whole equation.

SENATOR PADILLA: I know the fight over the market-based compliance mechanisms has raged on since before the ink was dry on the bill. And the Governor talks frequently about all markets all the time, and there's describing more of a command-and-control regulation.

Isn't it true that most market mechanisms, like cap and trade, require strict regulations in order to work? I guess specifically, I'm talking about the setting of the cap regulations spelling out: How the trading is done; you know, what's reported; its regulators; et cetera?

MS. NICHOLS: Yes. That's absolutely correct.

You cannot create a market for something that people don't want, and you can't create a commodity that has any value in trade without a very strict regulatory system that

underpins it.

So, I think there is a myth out there that these are two opposing ways of looking at things.

I do understand that the Governor's enthusiasm for markets, and his ability as a salesman to go out there and talk to people about how we're going to use markets in California, has caused some consternation.

And as I indicated in my opening remarks, that, you know, maybe people think that that somehow spells the end to the regulatory approach, but I am -- that's just not true. That's all I can say. You know it's not true.

SENATOR PADILLA: And part of the debate seems to be more about timing and sequencing than an actual disagreement over what needs to be done --

MS. NICHOLS: Yes.

SENATOR PADILLA: -- to reduce greenhouse gas.

MS. NICHOLS: I think so.

But actually, I don't think there is a disagreement, because AB 32 makes it pretty clear that, you know, we can't just go out and open a market in carbon emissions, even if the Air Resources Board wanted to. We have to go through the whole process of producing the scoping plan, spelling out exactly how it's going to work, and then adopting the regulations that would lead to any of the implementation that we're talking about, other than the early action measures.

So, I think we're going to have ample time over the next year-and-a-half to have the kind of discussion that will give people the confidence that we understand how these --

how these programs work.

SENATOR PADILLA: So, and that's great on the global level.

Can we come back to sort of one of the points that I started describing early on, which is: How, through a cap and trade program, or other mechanisms that you're implementing, can we protect communities like Pacoima, Sun Valley? Or, basically factor into our planning as decision making where people are buying credits, and from an environmental justice standpoint, help ensure that there's not certain parts of the state that are benefitting from then improved air quality, versus others that will continue to bear the brunt?

MS. NICHOLS: Yes, Senator.

I -- I don't pretend to be an expert in designing these programs, but I've listened now to enough people talk about these issues so that I think that there are ideas about -- out there about how you could design a cap and trade system with mechanisms built into it that involve location, either incentives to -- to do the actual reductions in certain areas, or restrictions on credits being used in certain areas.

If there are air quality problems associated with the reductions in the greenhouse gases, you can prohibit credits that would include any increases in health-based air pollutants at all.

In other words, I don't think in opening up any kind of a system of CO2, carbon dioxide, credits or allocations, you have to accept the notion that those could be obtained with

any -- any adverse impacts on ground-level ozone or toxic chemicals at all.

You could specify that you wouldn't have any credits if they didn't meet certain standards, or being healthy credits, so to speak.

So, I think there are a number of ways that people have suggested that you could protect any type of a greenhouse gas trading system that would make it clear that it couldn't be done in a way that would have an adverse effect on any community's health.

SENATOR PADILLA: And finally, can you comment on landfills and other waste facilities as the source of greenhouse gases, strategies to reduce emissions or pollutants from landfills?

MS. NICHOLS: Yes.

Most of the focus, as you know, in the global warming debate has been on carbon dioxide, because there's so much of it, and because controlling it has benefits in terms of energy efficiency and cleaner fuels. And so, there's been a lot of enthusiasm around that area.

But methane, which is the major gas that comes off of landfills, is a very potent greenhouse gas, and we have a lot of it in California in landfills and areas where we have waste in fields and in forests, and so forth.

And one of the real opportunity areas that AB 32 offers us is to use the cap as a way to create more of an incentive for people to capture and use that methane for productive purposes.

So, I think there's going to be some -- some very positive results from focusing on what we can do to clean up and reduce any emissions of methane into the atmosphere, and at the same time, you know, displace other dirtier fuels, and have a net benefit over all.

SENATOR PADILLA: I just want to make sure that we don't create a conflict for ourselves where, on the one hand, we're creating a market for the methane gas that comes from landfills in the biodegradation process of waste, while on the other hand, it's a state policy, and many local policies, to reduce our dependency --

MS. NICHOLS: Yes.

SENATOR PADILLA: -- on landfills.

MS. NICHOLS: Well, unfortunately, we have plenty of existing landfills to work with.

So, I would agree with you. If there was -- if there was a program that created an incentive for more, that would be moving us in the wrong direction.

But again, I think by working collaboratively with the Integrated Waste Management Board in this case, I'm creating any kind of a program for dealing with landfill methane. We can assure ourselves that we're not doing anything that would send contradictory signals in that regard about what the state's policies --

SENATOR PADILLA: I agree. While we do have waste going to landfills, we ought to sort of maximize that closed system, or mitigate environmental impacts, but keep our eyes focused on the bigger prize, which is to reduce the waste

stream, ideally.

MS. NICHOLS: Yeah. And again, I know people are throwing around terms like "credits" very loosely, and I don't want to be guilty of contributing to that.

But, you know, the fact is that reducing the waste stream, if it also reduces the amount of waste going to landfills, is having a direct -- will have a direct impact on reducing our contribution to global warming.

So, figuring out how to capture that benefit somehow, and create some larger incentive for people to reduce waste more, is what we should be looking to do.

SENATOR PADILLA: And I'll just conclude on the point that I can't emphasize enough the difference between air districts, where they're mandated to implement all feasible strategies, and the Air Resources Board, that's authorized but not required to, to me still provides this wiggle room.

We've talked about a number of strategies here today. But to know that it ends with a question mark of whether or not they will be implemented, even when there's clear consensus that it's a good idea, I think to me it gives the Air Board the wiggle room to not be as aggressive as we need to be.

MS. NICHOLS: I don't think that was a question, but if you'd like me to comment I would just say that, you know, in the past, there's been a lot of question about whether all districts were actually living up to the mandate to adopt all feasible measures as well.

And I think community pressure, public pressure, is what keeps them on -- on track. And I think that works for

both agencies quite effectively when the public comes in and demands that we -- we do our job.

And fortunately, we get a lot of that.

SENATOR PADILLA: Thank you.

CHAIRMAN PERATA: We're going to take a brief break so that Evelyn doesn't fall over.

[Thereupon a brief recess was taken.]

CHAIRMAN PERATA: We're going to reconvene.

Senator Dutton.

SENATOR DUTTON: Thank you.

Congratulations, Mary. I'm sure you'll do a great job.

MS. NICHOLS: Thank you.

CHAIRMAN PERATA: However.

[Laughter.]

SENATOR DUTTON: However --

MS. NICHOLS: I thought that was it.

[Laughter.]

SENATOR DUTTON: I do have some concerns. I won't repeat a lot of what Senator Ashburn was talking about with regards to representing an area that inherits or has air quality issues that somehow are a little bit beyond their effect.

I do represent Riverside and San Bernardino Counties. And as you know, the prevailing winds of that area have a tendency to -- we happen to inherit air. As a matter of fact, the Indians used to refer to my region as Smokey Valley.

That was back even before we had industry and trains moving goods from ports, and things like that. So, it's got a history of smoke, actually, from chimneys and things like that, that would settle in our region.

So, and that leads me to some of my concerns. Recently, as you know, we did a pretty good sized transportation bond, and within that it's got a component for goods movement.

I have some concerns over exactly, and I'm pro-job creation, and I'm pro-trying to move the economy forward, but I'm having a little bit of a challenge on expanding the capacity to bring in more goods and move them through the region, and at the same token, deal with some of the air quality issues if we don't take serious things like congestion relief and so forth.

So, maybe you can share with me your thoughts regarding goods movement, and how you feel the sound science, or whatever comes into play with how do we come up with some reasonable requirements, and at the same token, be able to grow the economy?

MS. NICHOLS: That's a really big question, and I -- I don't have a comprehensive answer to it. But I would just share a couple of thoughts.

First of all, the State of California is tremendously benefitted economically by our role as the place that goods go through, coming to and from the Pacific. And so, we have a commitment, I think, or we have obligation to try to play that role as well and as cleanly as we possibly can.

And some of our areas play -- pay a heavy price

for the economic benefit, particularly at the ports, around the ports, and at rail yards, and places where there's a lot of -- a lot of activity with engines and trucks, and there's congestion, and so forth.

And I think the Air Board has had some success in some of these areas. I had a meeting yesterday with some representatives of the rail -- the rail industry. I have been involved for a long time, in past incarnations, in this area and efforts to try to get cleaner engines into Southern California. And I'm pleased to see that there's been some progress in that area, some actual technology breakthroughs, as well as real efforts made to give California cleaner equipment first, before other parts of the country, because our problems are greater.

But there's a lot more that needs to be done, and I would hope that we can play -- we, the Air Board, that is -- can play a more active role, working with communities, and trying to help come up with rules that will push the technologies that are needed to reduce the overall health effect of these activities.

But I don't have a specific proposal or plan to put in front of you right now. I mean, I think the overall thrust of what I'm trying to do here, what I hope I'll be able to do at the board, is to be more collaborative with the local districts, and to be able to focus our resources on those activities where that help is needed.

SENATOR DUTTON: Do you feel that we should be delaying our plans to expand goods movement in California until such time as the Air Resources Board figures out a plan, or

regs, with regards to implementing AB 32 and all that entails?

MS. NICHOLS: I don't know how -- how that would be accomplished. I do know that --

SENATOR DUTTON: It's real easy. We don't have to let the bond out. I mean, we can just not fund anything.

MS. NICHOLS: Uh-huh, I see.

Well, I think in view of the vote of the people, that would be a difficult decision to make.

But I'm not really here to suggest that I -- that that would be my advice as to what you should do.

I think what we need to be doing, and I think this is what you're trying to do, is to use funds wherever we can, and wherever they're needed to overcome obstacles to -- to cleaning things up and moving forward.

But it's always easier to get people to go along with pollution controls if they're in an expanding economy, and if there's money to be spent. And we've certainly seen over the years, with the Carl Moyer Fund as a great example, of how you can use money to smooth over some of the real difficulties in -- in getting pollutants out of the air.

SENATOR DUTTON: Well, I guess from a business person's perspective, I guess the uncertainty is what's causing me some concern, because it seems like right now we've got Linda Adams with the Environmental Protection Agency. She's got a role, and their agency has a role. We have the Air Resources Board; they have a role in also getting the grips on this whole thing.

And then, even if I somehow manage to deal with

the issues for those two agencies, I've got an Attorney General that's probably going to sue me because he isn't quite satisfied with it.

So, from a business person's perspective, I really am questioning why I should now go forward until everybody kind of makes up their mind what exactly are the rules they're going to put into place in order to deal or get a grip on this whole issue of global warming, and air quality, and so forth?

I agree with the goals. I don't have any trouble with that.

What I'm trying to find is a way to get a handle on the sound science, the common sense approach. How do we achieve or our objective, and at the same token, not throw the baby out with the bath water?

MS. NICHOLS: Well, I was smiling a little bit when you made the comment about the business person's perspective, because I was -- I was in this same role at the Air Resources Board when Jerry Brown was the Governor, and when some national organization was -- put out a report that called California the worst state in the country to do business in. I can't even remember the name of that group, but it was some report that came out, and it ranked all the states. And California was considered the worst because of our tough air regulations.

And over the years, I think what we've found actually is that having strong environmental programs and economic growth not only are not in conflict, but they actually

go hand-in-hand.

Business certainly complains about uncertainty, and I know they'd like more certainty. Everybody would like more certainty.

But the reality is that people invest in places that they think are going to be good places to do business, and people have made money, and continue to make money investing in California. We certainly want to keep that happening, but cleaning up our air is one of the best things we can do.

SENATOR DUTTON: I guess that's where I am.

I don't think anything un-American about somebody making a profit. And I have no doubt that there'll be people that profit, regardless of the benefit that may or may not actually be achieved with the public.

There are people that we have programs in the name of good environmental practice, and so forth, that may or may not have been based on sound science, but somebody's still going to make money. So, I don't have any trouble with that.

What I'm concerned about is being a good steward of the land, being a good conservationist, making sure that what I'm to impose on the people and business is actually based on sound science and not theory. So, that's where one of my concerns would be.

Let me talk to you a little bit about forest management, because it would seem to me that we have not -- and when I say "we," I'm talking about "we" as the American people -- have not done a very good job, and starting with the federal government, in managing our natural resources, forest

areas.

What's your thoughts regarding what kind of a role does forest management play in dealing with greenhouse gas, and the issues involving our agenda in that area?

MS. NICHOLS: Well, California's forests are one of our great resources.

I was at the Resources Agency when the California Climate Action Registry was created, and I was instrumental in getting the legislation amended to include forestry as one of the areas for the Registry to work on.

And I was very pleased to see that they did adopt protocols for valuing investments in old-growth forests, and maintaining trees and their carbon as one of the areas that the Registry would certify.

I think the Air Board has a role in helping to try to create incentives for good forest practices.

I also know that there's -- there's serious issues about dead trees, and trees that have been affected by drought, and a need to remove those trees from the forest, find ways to do that safely and without impacting the health of the forest overall.

That's not part of my area of responsibility any more, but I'm definitely enthusiastic about the potential for AB 32 to create more of a role for biomass in the state. It's been a long-time interest of mine in various places that I've been. If we could safely and effectively use wood chips and -- and other thinnings to generate electricity, or to make other products, I think that's -- that's a very sensible and holistic

approach that we should be working on.

SENATOR DUTTON: Actually, with regards to forests, and I'm certainly not an expert in this area, but it just seems to me like a good, young, healthy forest actually can help cleanse the air. Whereas an older forest, the older the tree, the less likely -- I mean, they're no longer really producing. I mean, they produce more of a problem than they actually --

MS. NICHOLS: I'm in favor of age in all things, Senator, these days, including the trees.

[Laughter.]

MS. NICHOLS: But I think that older trees are storing a lot of carbon, as well as healthy -- if they're healthy, they're also storing water, and they're providing other benefits.

So, I don't think that what we want for environmental purposes is to plow under existing forests and replace them with tree plantations. Although, there are places in the world where that's done, it's not considered to be the best or optimum way of managing forests for -- for other environmental purposes.

So, I don't think anybody's actually pushing that we do that in California, fortunately.

SENATOR DUTTON: Well, I was just curious, because I was on the Blue Ribbon Fire Commission, and actually there's been some test forests out there. And it seemed to me like there was some evidence that would indicate that there is a way that we can have the best of both worlds -- where we can

have a good, healthy forest; we can have a realistic maintenance program, because once a tree is dead, frankly, it really is of no value. So, it's hard for industry to come in. You have to pay for it, whereas, if you can do it beforehand.

But what I'm really concerned about in my area, and we just recently had fires to remind us up in the Tahoe region. And in my area, Lake Arrowhead and Big Bear, we had big fires back there in 2003. And we've got a drought situation that's going on. We've got a lot of dead trees, and the bark beetle infestation will come back because we're over-planted and overgrowth.

Now, it would seem to me if we're trying to get a handle on the air issue, that also doing something about forest fires, or at least trying to make them less frequent or not as devastating, because it seems like we're fighting a battle here, because I no sooner maybe start getting a grip on dealing with my air quality issues from a business perspective, and then all of a sudden I get a natural occurrence that takes place. It just seems to me like we can do a better job in that area.

But you don't see that as being an area that the Air Resources Board really --

MS. NICHOLS: I think we can help to be part of the solution. And I certainly -- I don't -- I certainly don't want to be part of the problem.

And I think we can help with it through the mechanism of this plan that we're putting together under AB 32, highlight some of the areas where forestry, good forest practices, can play a role.

SENATOR DUTTON: Do you believe that increasing capacity on existing freeways also helps with our goal of trying to get a handle on air quality issues by helping traffic move more efficiently? Or do you feel that's misspent money?

MS. NICHOLS: From a pure air quality perspective, not looking at any other issues like land use, or what it does to -- to the area surrounding it, I don't think that expanding freeways is helpful for air quality.

I think we've -- we've studied this issue enough over the years to know that every time you expand the capacity on a roadway, and people drive enough to fill up that additional capacity very quickly, so we can't build our way out of the congestion problems.

And at the same time, having the traffic flow more freely doesn't really have the air quality benefits that you might think.

I know if you're sitting there in traffic, you'd like to believe that getting that car in front of you out of your way would improve the air. But the reality is that it's emitting the same amount, whether it's moving or whether it's idling these days.

And so, you're just not going to achieve any direct air quality benefit from speeding the traffic up, unfortunately.

SENATOR DUTTON: How do you feel about job housing balance? What does that mean to you?

MS. NICHOLS: Well, I guess --

CHAIRMAN PERATA: First of all, you're for it.

And then --

MS. NICHOLS: I'm in favor of it, yeah.

[Laughter.]

MS. NICHOLS: Seriously, I think that achieving a situation in this state where people can live closer to where they work is a very desirable goal.

And I wish it were -- I wish it were achievable by me at the moment. If we could just move Sacramento to Los Angeles, I'd be much better off.

[Laughter.]

SENATOR DUTTON: Don't you think it might be a good idea if we actually allowed jobs to then be created where the workforce housing's being developed?

MS. NICHOLS: Yes, I do.

SENATOR DUTTON: And so, you really don't support the air credits being exchanged outside of an area where they're producing housing. You wouldn't support air credits being used to be business expansion some place where housing's not located? Or, how is it from a regional perspective?

MS. NICHOLS: Honestly, that's -- that's a level of detail that I just have not looked at. If you're talking now about markets for air credits, I can't answer that question. I'm sorry.

SENATOR DUTTON: Okay. Thank you.

CHAIRMAN PERATA: Anything further?

Well, just with regard to something that's been riveting through the conversation, it does strike many that California is kind of an ideal state to be doing this.

We have unarguably the finest research, academic research facilities, both public and private, in the world. We are now investing more. In fact, I think the Governor's budget has money in there to expand commitment to alternative fuel research.

And then, we have the ability to apply what we've learned academically.

And then, we have a marketplace, since we have a whole bunch of folks here that spend money.

So, we really are a state that, if we can get this right, could not only talk-the-talk, but we could actually make something useful for the future out of it.

What I'm concerned now about, and I'm well satisfied with your appointment, is we have to have some way, in fact the reason for having you here today is to have some way to measure your success in implementing AB 32: What you're going to do; when you're going to do it; what we can anticipate.

And I'd like to be able to see things as they move along in a manner that we don't have to wait until the end to say green or red.

And I don't know if you can answer that right now, but what is your prescription for the immediate future?

MS. NICHOLS: Well, we -- you do have some milestones laid out in the legislation for items that the board is supposed to produce.

I would be pleased. I would really welcome the opportunity to brief you, the Committee, or any other body that you thought was most appropriate and efficient, on our progress

moving forward.

We have laid out a calendar of deadlines internally for ourselves for getting all the next things done: The inventory has to be done; we're, you know, mobilizing to get the scoping plan done, and so forth; and we've also, of course, got a regulatory agenda moving forward as well.

I know those documents are all publicly available, but if we could package them in a way that made it more accessible to you or your staff, we would be happy to do that.

CHAIRMAN PERATA: I think it'd be useful certainly to the staff, and also to the observing public. We've made it a big enough issue that there are lots of people paying attention to it.

I just want to reiterate the most important thing, and that is, while we begin to do the scoping on market mechanisms, cap and trade, these other things, that we just realize that how we measure success in the regulatory scheme, as mandated in the law, is the way we will determine whether or not we're being successful in the law that we've created. And it won't be nearly as important to have us recognized internationally as having talked about something.

But I know that all of us who've invested time, and energy, and who voted for this, and it sounds like even some that hadn't, are now looking to see specifically how we move.

I think you've talked about you've got the construction issue coming forward. And I believe there have been some pretty positive conversations that have taken place

about applying something that accounts for, particularly the smaller businesses so we don't do something that the large construction companies can do, and then we just blow out the little guys.

That's all very positive, but it's going to have to be demonstrable. It's going to have to be measurable. And we're going to have to know that if what we tried to do is not workable, how we might change it; how would you advise us to do that. If we're in the right direction but we can move faster, we should. If there are some impediments, we'd like to know what those are.

And so, I would just say to you here that we are really -- I don't want to say we're here to help, because you'd probably quit -- but I do want to acknowledge the fact that we are in this together.

I take no delight in any missteps being publicized. I think that sets us back as a state. I think it sets us back in the area of public health. We can't afford to do it.

So, your coming here today, the discussions that we've had, I think we should all view as being very positive and constructive.

Let's make it a two-way swinging door: That you can come our way, we'll come your way, with the idea that we want to get done what we share in common.

MS. NICHOLS: Thank you.

CHAIRMAN PERATA: So, thank you very much for being here. And congratulations for accepting the job.

MS. NICHOLS: Thank you.

CHAIRMAN PERATA: You're welcome.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 11:54 A.M.]

--ooOoo--

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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

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APPEARANCES

MEMBER PRESENT

SENATOR DON PERATA, Chair

SENATOR ROY ASHBURN, Vice Chair

SENATOR ROBERT DUTTON

SENATOR GIL CEDILLO

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

BILL BAILEY, Consultant to SENATOR ASHBURN

RUSSELL LOWERY, Consultant to SENATOR DUTTON

CORY AYAL, Consultant to SENATOR CEDILLO

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

MARK APREA
Anschutz Entertainment Group

CRAIG BROWN
California Statewide Law Enforcement Association

LINDA C. BROWN, Deputy Director
Office of Administrative Law

JOHN BURTON, Senator

LUCINDA CHIPPONERI
Wine Institute

APPEARANCES CONTINUED

LARA DUNBAR
California Restaurant Association

SHERRIE GOLDEN
California State Employees Association

STEVE M. HARDY, Director
Alcoholic Beverage Control

VICTORIA HORTON
California Beer and Beverage Distributors

FRED JONES
California Council on Alcohol Problems

JOE LANG
Young's Market Company

JOHN LOVELL
California Narcotic Officers Association, California Police Chiefs, and California Peace Officers' Association

ROXANNE MILLER

GEORGE OSBORN

KRISTIN POWER
California Grocers Association

AARON READ
California Association of Highway Patrolmen, Peace Officers Research Association of California

BURKS DEAN SHELTON, Member
California Gambling Control Commission

STEPHANIE K. SHIMAZU, Member
California Gambling Control Commission

PAULA TREAT
Pechanga Band of Luiseño Mission Indians

KRISTY WIESE
7-Eleven

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Members of the San Diego Regional Water Quality Control Board: DAVID A. KING, ELIZABETH PEARSON SCHNEIDER; Members of the San Francisco Regional Water Quality Control Board: WILLIAM E. PEACOCK, TERRY F. YOUNG: Members of the Santa Ana Regional Water Quality Control Board: FRED M. AMERI, MAURICE W. GALLARDA, WILLIAM A. RUH, SEYMOUR D. VAN GUNDY

PROCEEDINGS

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CHAIRMAN PERATA: All right. Linda, why don't you come up first, since this will not take any time at all. You're like an unknown quantity. You don't have the record that Steve has.

(Laughter.)

MS. BROWN: Thank you, Mr. Chairman.

CHAIRMAN PERATA: Welcome.

MS. BROWN: Thank you.

Linda Brown, Deputy Director, Office of Administrative Law.

Yes. I've been --

CHAIRMAN PERATA: Does this sound familiar at all?

(Laughter.)

MS. BROWN: Yes. Been here before. I was confirmed in 2005 for the same position, served since January of 2005. And I previously had many years of experience here at the State Senate. And those years of reviewing statutes and analyzing statutes are a very good background for assessing regulations that are proposed by state agencies and whether they're consistent with the underlying statute. And that's the core mission of the Office of Administrative Law.

And with that, I'd be happy to answer any questions you have about my experience, my expertise or the Office of Administrative Law.

CHAIRMAN PERATA: You know, I think I'm going to forgo the temptation to learn more about the office. I reserve my right though to some day call you up --

MS. BROWN: A wise choice.

SENATOR CEDILLO: Maybe they'll accept writing.

CHAIRMAN PERATA: Yeah, they'll accept it in writing.

Any questions?

Well, we certainly know your work and respect your work, and we're delighted that you've decided to continue.

And with that, do we have a motion to approve your --

SENATOR ASHBURN: Do you want to take witnesses?

CHAIRMAN PERATA: Is anybody here for yes -- yes or no?

You don't want to quaere a good thing here.

(Laughter.)

CHAIRMAN PERATA: Good.

Call the roll please.

COMMITTEE SECRETARY WEBB: Cedillo?

SENATOR CEDILLO: Aye.

COMMITTEE SECRETARY WEBB: Cedillo, aye.
Dutton?
SENATOR DUTTON: Aye.
COMMITTEE SECRETARY WEBB: Dutton, aye.
Padilla?
SENATOR PADILLA: Aye.
COMMITTEE SECRETARY WEBB: Padilla, aye.
Ashburn?
SENATOR ASHBURN: Aye.
COMMITTEE SECRETARY WEBB: Ashburn, aye.
Perata?
CHAIRMAN PERATA: Aye.
COMMITTEE SECRETARY WEBB: Perata, aye.
MS. BROWN: Thank you very much.
SENATOR ASHBURN: Thank you.
(Applause.)
CHAIRMAN PERATA: Next is Steve Hardy, Alcoholic --
(Laughter.)
CHAIRMAN PERATA: -- Alcohol Beverage Control. And Mr. Burton, the Honorable. Welcome.
SENATOR BURTON: Oh, shoot.
(Laughter.)
SENATOR PADILLA: Welcome back.
SENATOR BURTON: Some day they're going to raise

this or lower this mike. I just recovered from the last time I was here.

CHAIRMAN PERATA: Is there a lawyer here?

(Laughter.)

SENATOR BURTON: Did you know Jim Otto lost a leg?

Anyway, Mr. Chairman and Members of the Committee, I'm just really delighted to be able to introduce Steve Hardy, who has been nominated to be Director of ABC. As Steve said in his farewell on the floor from being a staff member for years, that the Burton family and the Hardy family go back many years. And I think it's fair to say if it wasn't for the Hardy families, there would have been no Burtons in elected office.

Steve, as all of you know, was a staffer here for years. He's eminently qualified for this position. He knows the bureaucracy from having to deal with it. He knows the statutes from having to pass them. He knows law enforcement from being a member of the San Francisco Police Force years ago. And I would like to say that Steve is, I know, but I think everybody in the industry is grateful to you, Mr. Chairman, for the effort that you put in and the work that you did to assure that somebody of Steve's caliber would be appointed to this position.

So without further ado, I give you Steve Hardy. Do with him what you will.

(Laughter.)

CHAIRMAN PERATA: Thank you, John.

Mr. Hardy.

MR. HARDY: On that ominous note, I'll...

I'm very grateful to be here today and honored by the Governor's choice. I'm honored by those who helped me get there, because I had a lot of assistance, as you know. In this building. New friends are good to have.

And if you looked at my resume, you'd think I'd actually geared myself to be in this position. But I'll tell you up until August of last year when I submitted my application, I had never thought about it, even though we had worked with ABC, et cetera. I was thinking about retirement and things like that. And the last director retired, Jerry Jolly. And I had given resolutions to the three previous directors.

And, you know, working with the Department over the years there really a can-do group of people, they're very prideful in what they do, and they accomplished a lot considering the numbers. We have four hundred and approximately twenty employees right now, and there's 78,000 licenses in the State of California. And they do give a good account of themselves.

I've been out on a couple of their operations in the evening as an observer only. And there are things that we have to do. I mean our job is to enforce the mandate given to us by the Constitution to uphold the ABC laws. And it was real interesting, because -- just a little short story -- I was out on a -- those two bars in the east out in Citrus Heights, you may have seen television or heard radio about it. But my daughter called me once and she's 40 years old and I -- she said, "Where are you?" I said, "I'm on a stakeout right now." And she said, "Well, what's that" And I said, "I don't have time to tell you now, but I'll tell you tomorrow when this is over."

The next morning when I was getting ready for work, my wife -- I was telling my wife that day I got call from Shannon. And she said, "Well, I didn't know the ABC did" -- "I thought they only did alcohol." And my wife is a good bellwether for, you know, what people are thinking.

And it's one of the things that people don't know is our enforcement work. And even more importantly to me, the preventative work that the Department does. Everyone of us has a terrible story about a relative, I'm sure, that was affected by drugs or alcohol. In my case it was A brother at 32 who succumbed to the ravages of heroin and alcohol. And everybody has something like that. And they

do the shoulder tap. They do the minor decoy. They do lead training where they'll train the employees on an establishment, on how to serve and what to look for. And I mean that is really important to me. And right now, you know, we're lower in personnel than we should be. And I don't ever want to give up what we do in that aspect. It may get reduced, but we'll never give it up because I think it's -- I think it's really important. If you reach anybody, it's important.

So I'm grateful to be here. And I probably could accomplish more by listening to any questions you may have. I was fortunate to work with you for --

CHAIRMAN PERATA: You almost said that with a straight face.

(Laughter.)

MR. HARDY: -- for 25 years. And the other 6 I was a lobbyist for the California State Employees Association. Sherrie Golden is out here.

But my years in the building have been exceptional. I've had great bosses. We've covered a lot of ground. I've seen a lot happen this Legislature up and including through term limits. And it's definitely a new world, and I think that we need to know that in our operations. And that's it. I'm stopping.

(Laughter.)

CHAIRMAN PERATA: Well, thank you, Steve. I think all of us, or at least on the dais, know you and respect your work that you've done here as a consultant. And I was -- no one was more delighted than I was when the Governor chose you to take that position.

There's one thing that you and I have talked about, and I've seen from my own experience in my district, because of the -- I didn't realize there were that many licenses in the State of California. About two-thirds of them I think were in Oakland.

(Laughter.)

CHAIRMAN PERATA: And we've had lots of problems and have seen a winnowing out of the number of staff to be able to do these things. And I didn't realize but statistically our own DOJ agents, which I believe are underpaid as it is, get almost 20 percent more in total compensation than your investigators. And that sort of throughout your agencies is consistent. And I would expect that you have recruitment problems and retention problems out of hand. The question is: What would it take to sort of resolve what stems in that issue?

MR. HARDY: It is a big issue. It was the biggest issue that I stepped in to when I went to work there. It was an ongoing issue.

And the contract for Unit 7 got reopened last

year after the negotiations. And DOJ ended up with a 10 percent -- almost a 20 percent increase over what we make. And I'm old enough to have worked on the Collective Bargaining Act that Senator Ralph C. Dills authored in 1977. I was just finishing my fellowship and had been put on staff. And I got to tell you, he'd roll over in his grave if he knew that, you know, there was a 20 percent differential in a class of workers that essentially do the same thing.

Now, you know, it happens and we really tried to fix it from our standpoint and were going to use our own money to do it, in fact, which -- because we're a fee agency, so it wouldn't have cost the state anything.

But there was more interest in a global solution and, you know, park rangers and Department of Insurance and DMV people being brought up to snuff too. There's so many of them, everybody, you know -- and I acknowledge everybody has a story to tell and most of them are fair.

But our guys are the guys that work, you know, evenings and weekends doing the investigations that they need to do to stop some of the stuff that's going on.

And I still am hopeful I can find some way to do that. But there's not a will to reopen the contract now, and I understand that. And I also -- the interesting thing I learned when I became Director -- Acting Director

was that I could do it myself if I needed to. But now, you know, I have agency I must be cognizant of, I have the Governor's office I must be cognizant of, I have the Department of Personnel Administration. And I want to do it the right way. I want everybody to be on board so we can say, "This is it," and, you know, there isn't a problem about it.

So I'm proceeding in whatever way I can for the rest of the session, because otherwise it will go into next year's negotiations when the contract is expired. And my fear is if we don't solve it in negotiations, then the same thing gets carried forward in the contract. And I think we can make a case for our employees to be deserving.

We have 28 vacancies right now. We just got the case here. We have 28 vacancies in our investigators. We're entitled to 151, I think.

Since the language -- trailer bill language went out of the budget, we've had up to yesterday six notifications of employees that are going, you know, at least in interviews or going to other agencies. So there's another 10 or 12 of them that can and are in negotiations. And these are the mid-management people that, you know, really there experience is just -- and you can't calculate the value of it.

So it's a real, real serious, serious situation for us. And I'd love to get some of you to listen, but everybody has problems too. So we're just going to keep working as hard as we can to see that that gets done.

CHAIRMAN PERATA: Get this straight. The Torch Club would have to pay you more in order to -- that's why it's working.

(Laughter.)

CHAIRMAN PERATA: Just pick one out of the air.

MR. HARDY: Well, that's another thing that we have to look at is raising fees somewhat. But it's not going to be expensive. I mean it could be up to $28, $29 a year for certain licenses and it will be less in others and more for others. But that hasn't happened in a long time. The Legislature gave the agency -- the Department the authority to do that. And it hasn't been pulled yet, the trigger on the CPI in that.

CHAIRMAN PERATA: You and I will get together over a drink and talk about that stuff.

MR. HARDY: Awesome.

(Laughter.)

MR. HARDY: Thank you, Godfather.

(Laughter.)

CHAIRMAN PERATA: Alex.

SENATOR PADILLA: You come to him in friendship.

MR. HARDY: Yes. You as well, sir.

SENATOR PADILLA: I have a couple quick questions, and sort of just take off on this point of staffing levels.

I heard you mention 151 authorized investigator positions.

MR. HARDY: Yes, those are peace officer.

SENATOR PADILLA: And that's to enforce the laws over how many retailers in the state?

MR. HARDY: Seven-eight thousand.

SENATOR PADILLA: And --

MR. HARDY: We really do a good job at it considering.

SENATOR PADILLA: And then you mentioned a couple programs I think that need tracking.

MR. HARDY: Yes.

SENATOR PADILLA: You mentioned minor decoy program and others.

Is your Department the only department authorized to enforce the laws as it pertains to the sale of alcohol?

MR. HARDY: No, sir. Local police agencies are able to do it themselves with us. We have these grants that we give various police departments. They're able to use that for anything to assist the Department. But, no, they have -- locals have authority to do it on their own

as well.

SENATOR PADILLA: Okay. And that's been the case for a number of years, I imagine?

MR. HARDY: Yes. The only thing that had to happen -- excuse me for interrupting you. But a couple of years ago we had to develop a shield for the decoy, because if a youngster -- you know, an underage person walks into a store and picks up alcohol, even if they're doing it as a decoy, it's really -- it was a violation of the law. So we established that cover and it's been okay since.

SENATOR PADILLA: Okay. And has there been any problems as a result of local law enforcement agencies helping enforce the law of Sacramento -- alcohol sales? Excuse me.

MR. HARDY: No, actually I know that in Vacaville where I live they send out a letter -- the police department sends out a letter to the bars a week ahead of time -- bars and restaurants a week ahead of time saying that we're going to be making this pass on this night. We tell them -- they tell them exactly when they're going to do it.

SENATOR PADILLA: You tell the local agency?

MR. HARDY: No, the local agency tells the alcohol establishments in the town the week before that

they're going to do it. And we still -- they still catch people.

(Laughter.)

SENATOR PADILLA: I imagine that by the existence of grant programs to local law enforcement --

MR. HARDY: Yeah, we have a grant assist -- a public GAP program, a Grant Assistance Program where we give up to 125,000 to local law enforcement agencies. We gave $3 million this year. I mean that's one thing that may have to be cut actually when we start relooking at how we're going to, you know, do our battle.

SENATOR PADILLA: My question is this: I take it that by the existence of the grant or the grant program that local law enforcement agencies are not just allowed or authorized to enforce the law but actually encouraged to help enforce of law?

MR. HARDY: Yes, there are those that do it on their own as well. But, yes. And we work with those agencies if they want us to work with them, absolutely.

SENATOR PADILLA: And that's a good question. That collaboration is voluntary, it's not required?

MR. HARDY: No, no. I mean we're trying to make associations with any law enforcement agency we can, quite frankly, because it always pays off down the road, you know, on something else.

SENATOR PADILLA: Okay.

MR. HARDY: So we can't give grants to every program, but we -- I mean to every department, but we give to as many as we can. And it's $3 million right now.

SENATOR PADILLA: And I've heard a lot of the upside to allowing locals to help enforce the law, from increased compliance to additional fines, revenues to the state or to local governments, et cetera.

Is there any downside that you have seen or heard of?

MR. HARDY: I haven't seen any, frankly. I mean it's worked at -- notification that gets in the paper, and people can read the paper and say, "Ah, so they are at least trying to address the problem."

Obviously, you know, with a state this big and many law enforcement agencies we have, we can't get to all of them but it's terrific when we do.

SENATOR PADILLA: Thank you very much.

MR. HARDY: Yes, sir.

CHAIRMAN PERATA: You mentioned Citrus Heights. There are probably more real estate agents in Citrus heights than you have in your entire --

MR. HARDY: These were fairly sleazy establishment, I must say.

CHAIRMAN PERATA: We can't do that here.

(Laughter.)

MR. HARDY: I didn't name them.

CHAIRMAN PERATA: And in Vacaville you let people know a week ahead of time that -- do they know who's buried in Grant's Tomb as well?

(Laughter.)

MR. HARDY: I don't know.

CHAIRMAN PERATA: Any other questions?

Yes.

SENATOR DUTTON: Just a quick one, yeah.

Mr. Hardy, I want thank you, first of all. You and I discussed a program that I'm particularly fond of, called "Every 15 Minutes" that you respond back. And I appreciate your quick turnaround on that.

MR. HARDY: Thank you.

SENATOR DUTTON: And I think you just -- so I'm glad to support your appointment. And I'd just like -- with regards to that "Every 15 Minute" program, as you know is one that I'm particularly fond of. So if there's anything that I can do to help, you know, to bring that program up and down the state, I certainly want to offer you my assistance and help you promote that. I think it's a great prevention program.

MR. HARDY: When I walked back from my interview with you, right outside my door is a plaque from Franklin

High School we got back in 2005 that was thanking us for the assistance in that particular program.

CHAIRMAN PERATA: There's a significant -- well, "significant" is the wrong choice of terms. There's a number of lobbyists here, many of whom I think are here to make sure that you are in fact no longer --

(Laughter.)

CHAIRMAN PERATA: But that notwithstanding, if there's anyone here who'd like to briefly come up and speak on behalf of Steve, please do so.

SENATOR ASHBURN: Watch your knee.

MR. LOVELL: Yeah.

(Laughter.)

MR. LOVELL: Mr. Chair and Members of the Committee. I'm John Lovell with California Police Chiefs' Association.

We were very proud to be early supporters of Steve's candidacy for ABC, and this is just an outstanding appointment.

One of the tensions at ABC is that you have an agency that on one hand is a license granting agency and on the other hand is an enforcement agency. And I think Steve will make sure that the enforcement arm of the agency addresses what are really important quality-of-life issues in communities.

You mentioned the problems in the Oakland area. A number of years ago when I was Chief Deputy of the L.A. City Attorney, we looked at -- we did the first local ordinance regulating liquor stores through zoning. And the factoid that just stunned me at the time, in south central Los Angeles, it has a population of a little over 300,000 people, there are more alcoholic beverage outlets in that area than there are in 34 states in the United States. And Steve's absolutely right, the agency is suffering from a brain drain because of the disproportionate salaries. And one of the first orders of business I think that needs to be done, and this Legislature has the opportunity to take the leadership, is to address that, so that they have the necessary resources in what's a terribly important public safety function.

CHAIRMAN PERATA: Thank you.

MR. BROWN: Craig Brown for the California Statewide Law Enforcement Association, who represents the employees of Mr. Harding, and we're pleased to be here in support.

We've had good meetings with him. We agree completely with your problem. And we're looking forward to a successful outcome for these employees from the next bargaining round.

CHAIRMAN PERATA: Thank you.

MR. JONES: Senators, Fred Jones, California Council on Alcohol Problems, in strong support of Steve's nomination. And obviously we're very concerned because we think the first thing on the chopping block when we had this so-called brain drain are decoy programs. And that is of deep concern to those organizations that I represent that are concerned about the access to you.

CHAIRMAN PERATA: Thank you.

MR. READ: Thank you, Mr. Chairman, Members. Aaron Read representing the 60,000 members of the PORAC and the 10,000 members of the California Association of Highway Patrolmen, all of whom care deeply about drunk driving issues, people who provide alcoholic beverages to under-aged children.

Those are the kinds of things that Steve's passionate about. He's passionate about law enforcement, that I know. I've known him for over 30 years. In fact, he took my position when I left CSEA more than 30 years ago. Better than 39 years now. So it's been awhile.

He's passionate about his work. He cares deeply about people. I couldn't think of a person on the planet who'd do that job better than Steve Hardy could. We're very passionate about coming to indicate our support for him.

CHAIRMAN PERATA: Thank you.

MS. MILLER: Mr. Chair and Members. Roxanne Miller.

I'm here today -- many of you know me as a City of San Jose's representative. But particularly I'm here today -- you've heard from John Lovell, the absolute importance of ABC, and it's important in keeping order, public safety alive and well in cities across this state.

I'm here, however, today to give you my personal endorsement and support for this appointment. This is the first time actually in my career I've done this for someone personally. But I would like to share with you my experience with the gentleman that's before. This is a man of his word, of integrity. And he truly -- substantially based on his experience in this good building, the State Capitol, his experience in working with the legislative process in all of the issue areas for which will challenge him as the Director of ABC, tremendous experience and understanding. And a tremendous regard of course for the legislative process, for the executive branch of government, and while we believe -- or I believe rather hit the ground running to try to work with local government, with the industry, and with all of us to resolve these very pressing important issues.

So with that, as an individual, I'd like to recommend him for your confirmation.

Thank you.

CHAIRMAN PERATA: Thank you.

MR. LANG: Mr. Chairman, Members. Joe Lang representing the Young's Market Company, one of the large distilled spirits and wine wholesalers in California.

I had the pleasure, I hate to admit, that 30 years ago serving as Steve's counterpart to the Assembly GO Committee. One of the things I learned there, along with a lot of things, is just that Alcoholic Beverage Control Act is one of most arcane, difficult areas of law ever written and continues to be that. There may be 12 people in the state that really understand and know how that law works, and one of those people is this guy sitting right here. And for that alone deserves your support. Steve knows how the industry works, he knows all the people, he's a consensus builder, and we strongly support his appointment.

MS. CHIPPONERI: Mr. Chairman, Committee Members. Lucinda Chipponeri for the Wine Institute.

The Wine Institute staff has had the good fortune of working with Mr. Hardy for about 16 years. We know him to be very credible, open minded, consensus driven, and certainly qualified for the position as Director of ABC.

We urge your aye vote today and certainly we urge your Senate confirmation.

CHAIRMAN PERATA: Thank you.

MR. APREA: Chair and Members of the Committee. Mark Aprea. I'm here on behalf of the Anschutz Entertainment Group, but also on a personal level. I've worked with Steve since at least 1990 on a whole host of issues, not only alcohol but solid waste and tobacco-related issues when the Senate GO Committee had jurisdiction over those two subject matters. And I can tell you that Steve always knows his stuff and he always gives it to you straight even when the straight answer is not what you want to hear. But I back my support for his confirmation and urge your aye vote.

Thank you.

CHAIRMAN PERATA: Thank you.

MS. HORTON: Good afternoon, Chairman, Members of the Committee. I'm Victoria Horton with the California Beer and Beverage Distributors.

On behalf of our 120 beer wholesalers in the State of California, we heartily endorse the nomination of Steve Hardy and his confirmation here today.

I've known Steve since 1989. And his work has made this State Legislature very proud. And I think he will do an excellent job. He knows the laws thoroughly. He's very balanced in his approach to things. And I think he's the kind of level-headed person that we need in the

administration.

Thank you.

CHAIRMAN PERATA: Thank you.

MS. WIESE: Good afternoon, Mr. Chairman and Members. Kristy Wiese on behalf of 7-Eleven Stores.

I cannot say that I've worked with Mr. Hardy for over 30 years. But I can say that 7-Eleven holds approximately 1300 ABC licenses. Obviously this appointment's very important to us and we're pleased to have the opportunity to work with Mr. Hardy.

Thank you.

MS. POWER: Mr. Chair, Members of the Committee. Kristin Power, California Grocers Association, on behalf of our supermarket, Mass Merchandiser, regional chain and convenience store membership. We're pleased to support the candidacy of Mr. Hardy.

CHAIRMAN PERATA: Thank you.

MS. DUNBAR: Lara Diaz Dunbar on behalf of the California Restaurant Association. And we're pleased to support Mr. Hardy's appointment as the Director.

Our association has worked with Mr. Hardy for many, many years when he was with the GO Committee. And we found him to be very fair and open minded to all industries and interested parties.

Thank you.

CHAIRMAN PERATA: Thank you.

MR. HARDY: Thanks, mom.

(Laughter.)

MR. OSBORN: Good afternoon, Mr. Chairman. I wanted to offer a personal request --

CHAIRMAN PERATA: Why don't you give us your name first.

MR. OSBORN: George Osborn, as a former police officer, sharing some of the same background as Mr. Hardy, I've had the pleasure of knowing for many years. And I heartily recommend his approval, in spite of the fact that he was a sailor.

(Laughter.)

MR. HARDY: And that comes from all the Marines I ever run into. I don't know why. We took them everywhere they had to be.

MS. GOLDEN: Mr. Chair and Members, Sherrie Golden representing the California State Employees Association.

Steve and I go back 30 some years, and we lobbied together. He worked with us on the Ralph C. Dills Bill, which is known as the Collective Bargaining Bill, did an outstanding job. He gave us collective bargaining. I don't know if we can blame him for that or thank him for that but he did. I lobbied with Steve. He's always

there, always ready, knew everything. Covered every base that there was to cover in the building and outside the building, was wonderful with our members, and did an outstanding job.

I can't think of anyone who will do a better job in ABC than Steve. I've known him, not only as a colleague, but he's a very dear friend. He's extremely compassionate. He listens. He talks to people. He takes things that people say very seriously and he does the right thing.

So I applaud the Governor for this nomination and I urge your confirmation. And Steve is about the best you can get.

Thank you very much.

CHAIRMAN PERATA: Thank you.

Any non-industry people here that would like to comment?

(Laughter.)

CHAIRMAN PERATA: Just kidding.

SENATOR ASHBURN: I'll make a motion --

CHAIRMAN PERATA: Steve, any family?

MR. HARDY: No. I got fortunate. I was able to introduce my family on the floor when you so kindly gave me that --

CHAIRMAN PERATA: That was enough of them.

MR. HARDY: But there are people here I'd like to acknowledge.

First and foremost, Dave Goss is the Chief Deputy Director. And he's the guy that stepped in and was the acting Director during the time they were leaderless. And he had a 31-year career with them prior. He's an excellent person and, you know, he's been great to work with. He's welcomed me.

As well as Heather Peters. I think she's a Deputy --

MS. PETERS: -- Secretary for Business.

MR. HARDY: Thank you. Deputy Secretary. I didn't want to get that one wrong.

And I've got Eric Hirata, Tim Gorsuch, and John Carr.

CHAIRMAN PERATA: These decoys? They look like kids.

(Laughter.)

MR. HARDY: They're a little bit of each.

But the Department has made me feel really welcome. They've accepted me graciously. And I'm honored to have the position I never thought I was going to get. And I appreciate the Governor giving me the honor to, you know, serve him well.

CHAIRMAN PERATA: George Miller is here. He's

got on his best Levis, but he didn't come up to speak. But it's good to see you here, George.

All right. We have a motion to approve, unless there's somebody here who wants to do something really stupid and come up and oppose this.

(Laughter.)

CHAIRMAN PERATA: Call the roll.

COMMITTEE SECRETARY WEBB: Cedillo?

SENATOR CEDILLO: Aye.

COMMITTEE SECRETARY WEBB: Cedillo, aye.

Dutton?

SENATOR DUTTON: Aye.

COMMITTEE SECRETARY WEBB: Dutton, aye.

Padilla?

SENATOR PADILLA: Aye.

COMMITTEE SECRETARY WEBB: Padilla, aye.

Ashburn?

SENATOR ASHBURN: Aye.

COMMITTEE SECRETARY WEBB: Ashburn, aye.

Perata?

CHAIRMAN PERATA: Aye.

COMMITTEE SECRETARY WEBB: Perata, aye.

CHAIRMAN PERATA: 5-0.

Congratulations.

(Applause.)

CHAIRMAN PERATA: We have two more. And we had a bet today, that Nettie said that we'd be out of here in 45 minutes. So --

MS. SABELHAUS: All those people coming in governs my time.

CHAIRMAN PERATA: Seven minutes, you've got --

(Laughter.)

CHAIRMAN PERATA: So Burks Dean Shelton and Stephanie Shimazu, please come forward. And these are members of the Gambling Control Commission.

MR. SHELTON: Senator Burton hurt himself here, so I'm going to be very careful --

CHAIRMAN PERATA: Be careful.

So, Stephanie, why don't you go ahead.

MS. SHIMAZU: Okay. Mr. Chairman, Members of the Committee. I'm Stephanie Shimazu.

(Applause.)

SENATOR ASHBURN: Quite a draw.

MS. SHIMAZU: I was appointed to the Gambling Control Commission in January of this year. I sit in the position that is reserved for the member with at least five years of business or governmental experience. And I fall into the latter category.

I grew up in Sacramento, went to UC Davis, went to University of San Francisco School of Law, and have

lived in Sacramento most of my life. Currently married, and my husband is here today. And we have a four-year-old daughter.

I've worked my entire legal career for various government agencies. I started with the Sacramento City Attorney's Office. Then decided to move on to the state. I have a big family of state workers, so I was glad to make the big move. I worked for the Department of Corrections, Legislative Counsel's Office, Department of Social Services. And most recently before this appointment I worked in the Governor's Legal Affairs Office for a little over three years.

I think my background in State Government has helped me in my role as a commissioner. I bringing with me some knowledge and experience of things like Bagley-Keene Open Meetings Act, Public Records Act, Administrative Procedures Act.

Additionally, while I was with the Governor's Office, I handled Indian gaming matters. So I have some knowledge of the Indian Gaming Regulatory Act, the provisions of the tribal state compacts. I know something about tribal sovereignty. And I was able to work with tribes and their representatives and cover various issues.

So that has -- I don't think a lot of people in state government has had the opportunity to work on Indian

gaming matters. I know I knew nothing about it before going to the Governor's Office. So I think it's helped me. I haven't had to start from scratch.

What I've been doing at the Commission. First and foremost, I had to learn the provisions of the Gambling Control Act so that when we actually vote at meetings, I'm able to do so appropriately and intelligently.

I've gone out to tribal casinos and card rooms, done visits. I've attended conferences on gaming and visited other associations. And I plan to continue to do these visits and getting more education on the gaming industry as I go along.

Some people have asked, "What's your philosophy on gaming? What's your position?" I think basically I'd have to say neutral. Prior to working on these issues I'd never had a lot of exposure to gambling. My parents didn't play. I didn't really have friends who played. So it was kind of a new issue for me.

And while I don't think someone from the Commission needs to have a lot of experience in gambling, and maybe it's better if they don't, I do think it helps to know something about the games. And I'm trying to kind of learn that as I go along as well.

Since I've been on the Commission a lot of issues

have come up. We've had the Office of Problem Gambling released its report on problem of pathological gambling in the state. We had MOA signed with tribes who negotiated -- or renegotiated their tribal state compacts. What else?

The GO -- Assembly GO Committee had a hearing on the impact of the CRIT decision and the tribes' minimum internal control standards. So that's something that we've been looking at.

And most recently the Bureau of State Audits released a report, I believe it was last week, regarding -- and the status of the Special Distribution Fund.

And all these issues kind of touch on what the Commission does either directly or indirectly. And kind of our role is to look at what we're doing with regard to how these issues affect us and then kind of question what more we can do and move in that direction.

So I'm happy to answer any questions you may have.

CHAIRMAN PERATA: Would you like to introduce your husband?

MS. SHIMAZU: Yes. Brian Kerry.

Actually my mother-in-law's here too.

CHAIRMAN PERATA: There you go.

MS. SHIMAZU: Linda Kerry.

CHAIRMAN PERATA: Good move.

(Laughter.)

CHAIRMAN PERATA: And your daughter's in the car?

MS. SHIMAZU: No, not -- she's at preschool. And, see, my mother's watching my nephew, so she's taken care of.

CHAIRMAN PERATA: All right. Well you're very well spoken. Thank you.

Mr. Shelton.

MR. SHELTON: Thank you, Chairman, Members. My name's Burks Dean Shelton.

Prior to -- my career started in 19 -- I hate to say this -- but 1957 in South Pasadena as a police officer, after being discharged from the Marine Corps honorably as a sergeant. I spent two and a half years and went to the City of Downey as a police officer, spending seven and a half years there. And after the Watts riots and being a motor officer, I decided to move to South Lake Tahoe --

(Laughter.)

MR. SHELTON: -- where I invested 25 years of my career and retired the last 10 years as police chief.

That 35 years consisted also of 14 years of investigation experience. And 8 of that was as a captain

in charge of the Detective Division. And that qualified me for the position I hold as a police officer/investigator on the Commission.

When I retired in December of 1991, I was contacted by the Governor's staff -- of Pete Wilson's staff, and was amazed and honored to be interviewed to be his law enforcement liaison. And I understand that came from the support of Los Angeles County police chiefs, who I knew very well in working with the Chiefs Association. I was honored and accepted. And I worked directly -- was hired directly by Governor Wilson, answered directly to Governor Wilson, and advised him of legislation, criminal justice issues, policy. Sat in the first negotiations for tribal gaming with the Deputy Chief George Dunn.

And during that period of eight years, I also became kind of the guy with a bag and the troubleshooting. And I spent almost a year at Youthful Offender Parole Board as the executive officer, still doing the duties of the liaison. And then I went to the Executive Director Office of Criminal Justice Planning, still doing the duties of the liaison. In the last few months of the Governor's term I was appointed to the Commission on Board of Prison Terms. And when his term ended, my liaison duties ended. And when the new Governor came in, my commission ended, which is only righteous. It was a

different direction to go.

After that I did some -- threw my hat in the ring and I served as the interim Police Chief for the city of Rippon for eight months and in Woodland for six months, where I did their budgets, did interviews, and recommended the hiring of the new police chiefs, who are still there since that time.

I had planned a career outside of government, because since I was 17 years old in the military, I've always worked in the government. And I've been offered a job with Motorola, believe it or not, and it was going to be a big experience when the then Chief of Staff, Pat Cleary, called me at home on a Friday and asked me to come down and have coffee. And she and Peter Simmons talked me into becoming a commissioner for the first time, the first term --

CHAIRMAN PERATA: They both left and here you are.

(Laughter.)

MR. SHELTON: Yes, sir. And I think the reason for that was during my term as liaison I attempted to convince the Attorney General and the Governor to create a commission, because when we looked out at that time the only oversight on card room and gaming was one administrative person in the Department of Justice and

local government. Being a local police officer and having very little knowledge about gaming and enforcement, I felt we needed to step up to the state level.

I was unable to sell that at that time. But I did talk the Attorney General's staff into making a trip to Nevada. And we came back with his number 2 guy, David. And they decided at that time that they were going to split the Commission -- to a division and an Attorney General under the Commission of the Governor. And then later that's what Senator Lockyer's proposal was, and that's why it was adopted. And that's what we live with now.

So that brings me to where I've been now for the last three and a half years as Chairman. When I moved into the office in February of '04, we had not had a chair for a year and nobody had bothered to appoint a chair or appoint an acting chair. So the three Commissioners there took it upon themselves to do that. And I'm sure you know the name Arlo Smith. And Arlo Smith stepped up and became the acting chair and did a good job for the Commission.

They never had a permanent executive director. And they didn't have an executive director on my arrival. And we -- the Commission, we hired a new executive director and brought him aboard at that time, Eugene Balonon, which has been appointed Superior Court bench

here in Sacramento, and he's been replaced by Steve Giorgi, who retired from IRS as a chief investigator, and has been with us for some time, does an outstanding job.

Our executive staff has had some changeover. And I was fortunate enough to talk to Richard Ross, who's retired FBI, special agent in charge of Sacramento office here for years, to come in take over our division where we go out and inspect slot machines and do the audits.

And to me that just brings the highest amount of credibility and experience and maturity to the organization.

We were also fortunate enough to bring a lady, Terri Ciao, into licensing. And when I was here the first time we had a terrible backlog in licensing. Thanks to her and the new system she's installed, our licensing, with respect to the Commission, has absolutely no backlog in licensing.

And we're working on being able to go on computer licensing. You can file for your license by the computer and file your fees at the same time to make it easier to go. We're working on a two-year license. We have regulations written in there and they're ready to go. We're very proud of that. And we did that at the urging of the industry and we did, quite frankly, at the urging of the Legislature. And we got there and we got that

done.

And we're working on the same thing for key employees to make it over to a two-year license, even though there's been some stumbling blocks there. And every time I think we have that particular bill solved and quiet, it seems to bubble up again. But today I'm hoping that, with a meeting this afternoon, that will be put to bed and we can get that before the legislators.

I'm just so proud of the staff. It isn't me that's made all these accomplishments. It's staff, state employees. They're very loyal, they're very hard working, they're very intelligent. And they come to work for a lot of pride and go home exhausted.

And we're very proud to have this lady appointed to the Commission. She's great to work with. And her background and her knowledge.

With that, I'll leave myself up for questions as well.

CHAIRMAN PERATA: Thank you.

Oh, thought we'd lost you there for a minute.

(Laughter.)

CHAIRMAN PERATA: Any questions?

SENATOR DUTTON: I just have one.

CHAIRMAN PERATA: Yes.

SENATOR DUTTON: With regards to -- this is for

Alice actually.

Just curious about your working on your knowledge of the gaming and so forth. What wins, a straight or a flush?

(Laughter.)

MS. SHIMAZU: It's funny, because I went to the Division of Gambling Control and they had a little training for us yesterday. And Commission Vuksich and I, they had us out there trying to play. And they had a little cheat sheet for me because when I kept saying, "What wins, what wins?" So I haven't gotten there quite yet and I still need to change --

CHAIRMAN PERATA: You're asking the right question.

(Laughter.)

MS. SHIMAZU: Someone helped me.

CHAIRMAN PERATA: You answered the question I had about the card clubs and on the licensing.

But any -- Paula, did you want to say something?

Do we have anybody here speaking to the support of the nomination?

MS. TREAT: Yes. Paula Treat, ABC decoy.

(Laughter.)

MS. TREAT: I wish.

CHAIRMAN PERATA: Law school.

MS. TREAT: Paula Treat. I'm also with the Pechanga Band of Luiseño Mission Indians.

We were part of the beginnings of what made the Commission to begin with. And I think that -- first of all, we're wholeheartedly supporting both the Chairman and Commissioner Shimazu. Both people of integrity, people of honor. We have enjoyed working with them. We don't always agree, but we always agree to disagree. And there's a great deal of respect that both of them have for the tribes and their sovereignty as nations.

But I was going to say is that I also think that you should be aware of the fact that I think they're running a good agency. They aren't trying to be a super agency. They're trying to do their job and I think they're doing a very good job.

CHAIRMAN PERATA: Thank you.

John.

MR. LOVELL: Mr. Chair, Members of the Committee. John Lovell with the California Narcotic Officers Association, California Police Chiefs, and California Peace Officers' Association.

We are strongly in support of the reappointment of Chairman Shelton. We've worked with Dean for many, many years. And he just brings a high standard of professionalism. Dean is one of those people -- going

through his experience, I was thinking that Dean is truly one of those people who'd rather talk about anybody but himself. I mean he made reference to the work he did for Governor Wilson, and he did an excellent job as Governor Wilson's liaison.

What he didn't tell you is that Dean was one of the people who was in on the creation of the COPS program and actually handled all the negotiations that developed in the creation of that program and putting together of the formula. And that's just one example of the kind of visionary look that he has. And his willingness to get in and do the hard staff work. He's just an excellent appointment.

I've known Dean personally since 1993 and had an opportunity to work closely with him on a whole host of issues. And, you know, when you're working on just kind of scut work, you really get a sense of somebody. And this is a guy of just of incredibly high integrity, and just can't say enough good about him.

CHAIRMAN PERATA: Thank you.

Anyone in opposition?

Do you have anybody you want to introduce?

MR. SHELTON: No. My wife's home preparing a birthday party for our daughter.

CHAIRMAN PERATA: Good for her.

Well, thank you both for being here. Thank you for your service.

SENATOR ASHBURN: Motion to approve.

CHAIRMAN PERATA: We have a motion to approve. Please call the roll.

COMMITTEE SECRETARY WEBB: Cedillo?

SENATOR CEDILLO: Aye.

COMMITTEE SECRETARY WEBB: Cedillo, aye.

Dutton?

SENATOR DUTTON: Aye.

COMMITTEE SECRETARY WEBB: Dutton, aye.

Padilla?

SENATOR PADILLA: Aye.

COMMITTEE SECRETARY WEBB: Padilla, Aye.

Ashburn?

SENATOR ASHBURN: Aye.

COMMITTEE SECRETARY WEBB: Ashburn, aye.

Perata?

CHAIRMAN PERATA: Aye.

COMMITTEE SECRETARY WEBB: Perata, aye.

CHAIRMAN PERATA: 5-0.

Congratulations.

(Applause.)

(Thereupon this portion of the Senate Rules Committee hearing

was terminated at approximately 2:30 p.m.)

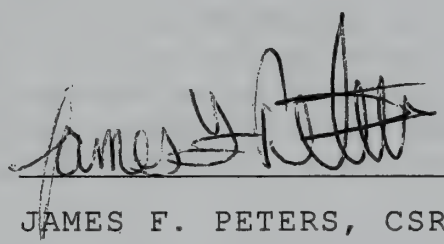
CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing for the State of California was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of January, 2007.



JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
License No. 10063

APPENDIX

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

OFFICE OF ADMINISTRATIVE LAW
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826

SUSAN LAPSLEY
Director

June 27, 2007

The Honorable Don Perata
Chairman, Senate Rules Committee
ATTN: Nettie Sabelhaus
State Capitol, Room 420
Sacramento, California 95814

Dear Senator Perata:

Thank you for considering confirmation of my reappointment as Deputy Director of the Office of Administrative Law (OAL). This letter is being sent in response to your request for a brief statement concerning my short and long term goals.

In the short term, I plan to complete two projects upgrading OAL's technology infrastructure. I am overseeing the replacement of OAL's old legacy database with a new modern database which is capable of being expanded and updated to grow with our needs. In 2006, former OAL director Bill Gausewitz asked me to initiate a redesign of OAL's website to comply with requirements of the Americans for Disabilities Act (ADA) and to enhance the overall user-friendliness of the website. As a result of that project, OAL transitioned to a new website in April 2007 which is generally ADA-compliant, which utilizes the new website template designed by the state Chief Information Officer, and which provides a number of useful links not offered on the old website. However, many PDF documents we post online are not fully accessible by visually-impaired people using screen reading devices. One of my short term goals is to assess the various PDF documents we post and determine which are most in need of conversion to enhance their accessibility by people who are visually-impaired. OAL's new director, Susan Lapsley, has made website accessibility and updated information a priority for our office, and I will work with her to accomplish these goals.

My key long term goal is to strengthen OAL's ability to enforce the Administrative Procedure Act (APA) with utmost proficiency. As you know, the APA is designed to ensure that state agencies only employ rules that are authorized by law, are written in a comprehensive manner, and supported by an adequate record. The APA guarantees the public a meaningful opportunity to participate in the adoption of state regulations and requires state agencies to establish that the regulations they propose

are necessary under the law. OAL's mission is to enforce the APA, and our dedicated staff has diligently maintained the highest standards of professionalism despite significant budget reductions in years past. In 2005, the Legislature authorized two limited term attorney positions for the review of petitions concerning underground regulations. Nevertheless, reduced staffing from previous years has taken a serious toll on the office, and much work remains to be done. The current level of staffing, combined with the inevitable future retirement of senior OAL attorneys, require a proactive management plan that will ensure uninterrupted fulfillment of OAL's mission. I will continue to work closely with the Director of OAL to formulate and carry out such a long-term management plan.

At your request, I am enclosing an updated Form 700, Statement of Economic Interest. No changes have occurred since my previous statement.

Thank you for your courtesy. I appreciate being given an opportunity to discuss my goals as Deputy Director of the Office of Administrative Law.

Sincerely,

Linda C. Brown

Linda C. Brown
Deputy Director

Enclosure

Cc: Members of the Senate Rules Committee

STATE OF CALIFORNIA — BUSINESS, TRANSPORTATION AND HOUSING AGENCY ARNOLD SCHWARZENEGGER, *Governor*

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
3927 Lennane Drive, Suite 100
Sacramento, CA 95834
(916) 419-2510

July 10, 2007

The Honorable Don Perata, Chairman
Senate Rules Committee
State Capitol
Room 420
Sacramento, CA 95814-4900

Attention: Ms. Nettie Sabelhaus
Rules Committee Appointment Director

Dear Senator Perata:

On July 18, 2007, I am scheduled to appear before the Senate Rules Committee regarding my confirmation as Director of the Department of Alcoholic Beverage Control. As Chair of the Senate Rules Committee you have requested I respond in writing to several questions prior to my appearance before the committee. I appreciate this opportunity to answer those questions. I look forward to my testimony before the Senate Rules Committee and to discuss my vision and goals for the Department.

As Director of the Department of Alcoholic Beverage Control, I believe my primary responsibility is to lead the Department in a manner consistent with Governor Schwarzenegger's policy agenda and to work closely with the California Legislature on ABC related matters. I feel strongly that ABC can assist in accomplishing Governor Schwarzenegger's goals of streamlining government and promoting a healthy business environment in California. At the same time, I think it is equally important to improve the quality of life for our citizens by enforcing ABC laws in a fair, reasonable and impartial manner. I feel my early years as a San Francisco police officer dealing with crimes which were exacerbated by the use and abuse of alcohol, and also working side by side with ABC Investigators gives me a unique perspective as to the value and need for basic and consistent alcoholic beverage law enforcement. In addition, my 25 years of experience working in the California Legislature, primarily with the Senate Committee on Governmental Organization has given me the opportunity to be involved in doing extensive research on the alcoholic beverage industry itself and the need for reasonable and practical regulatory oversight. All of this experience, I believe, would be an asset in making ABC a successful component of this Administration.

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My responses to the questions posed are as follows:

Question 1 – What are your goals as director of the Department of Alcoholic Beverage Control? What do you hope to accomplish during your term? How will you measure your success?

- Ensure ABC has a positive impact on California's economy. Seven percent of all businesses in the state hold an ABC license, employ thousands of residents and generate over $500 million in excise and sales tax revenues per year. Businesses licensed by ABC are key elements of California's economy and include resorts, hotels, major tourist destinations, grocery stores, restaurants, small businesses, and our internationally renowned wine industry.

- Ensure that the California ABC continues to be viewed as one of the premier alcoholic beverage law enforcement agencies in the nation by proactively working to improve the quality of life in all California communities, through responsible licensing of ABC premises, and consistent ABC law enforcement.

I hope to accomplish during my term:

- To collaborate and collectively work with all of ABC's stakeholders to effectively and efficiently administer the provisions of the Alcoholic Beverage Control Act to ensure appropriate licensing and regulation of the alcoholic beverage industry; and to create and promote a competitive, yet responsible business climate here in California by working with all ABC's stakeholders including the industry itself, local governing bodies, local law enforcement, California's citizens, and various community groups.

I will measure my success by:

- Maintaining an open dialog with the Administration, the Legislature, and all of our stakeholders to freely discuss those areas of our operation that meet with their satisfaction and work to modify and improve those areas where concerns are identified.

- Continuously monitor and compare ABCs progress in both our licensing and enforcement activities against those established performance measurements that were created to evaluate our overall effectiveness and efficiency. These measurements were developed to support the Governor's Performance Improvement Initiative to streamline the governmental process to improve efficiencies throughout State service. Since the implementation of these performance measurements, ABC has re-engineered several of its processes which have greatly increased our ability to complete ABC license applications providing businesses the opportunity to begin their ventures with fewer delays. In addition, these performance improvements have greatly enhanced the Department's law enforcement mission resulting in more compliance from licensees.

Question 2 – What do you perceive to be the most important issues confronting the Department in both short-and long-term?

I perceive the most important short-term issues confronting ABC to be:

- Recruitment and retention of tenured and trained investigators (discussed more fully under Questions 4 and 5, below).

- Completion of the initial design of the new licensing and compliance information computer system, i.e., Alcoholic Beverage Information System (ABIS), discussed more fully under Question 6, below.

- Prudently maintaining an appropriate fiscal reserve in the Alcohol Beverage Control Fund to ensure ABC meets its constitutional mandates.

- Identifying and implementing the use of a temporary classification in state civil service to be used until a future Supervising Licensing Representative classification is created to oversee and supervise ABC's licensing program at the field level. The Department will continue our efforts to establish this new classification which is a time consuming and laborious process.

- Use of a temporary classification will allow ABC to continue its effort to fully "civilianize" its licensing staff and use its peace officer positions to perform full-time law enforcement duties. The ultimate results (implementation of the new classification) will be the enhancement of both major career paths within ABC while providing additional cost savings benefits.

Question 3 – In light of the Supreme Court's decision, how will you ensure that when the Department adjudicates future cases it complies with this Supreme Court decision?

- I have already consulted with the Department's Chief Legal Counsel and have made the initial changes necessary so that ABC is now in compliance with the Supreme Court decision as it pertains to ex parte communications.

- The Department's legal staff is now in the process of evaluating a reorganization of the Executive Staff to provide a more functional and permanent remedy.

- These initial and permanent changes will protect the integrity of the administrative adjudication process by eliminating all potential ex parte communications between ABC's prosecutorial staff and myself as they pertain to the Supreme Court decision and all future ABC administrative judicial decisions.

Question 4 – Please explain the salary differential and recruitment and retention problems the Department is experiencing.

Salary Differential Issues:

- Prior to the recent renegotiated Bargaining Unit 7 (BU7) contract, Department of Justice (DOJ) Agents received approximately 10% more total compensation than ABC Investigators.

- Under the new BU7 contract DOJ Agents receive over 19% more total compensation than ABC Investigators.

- Department of Corrections and Rehabilitation (Internal Affairs and Parole) and the Office of the Inspector General Agents receive approximately 29% to 32% more total compensation than ABC Investigators. ABC loses the highest number of investigators to DOJ, and a lesser number to CDCR and the OIG.

- ABC Investigators have full peace office powers similar to DOJ, Highway Patrol, local police departments and sheriffs departments, yet ABC Investigators receive the identical compensation package as those peace officers in other state agencies with limited peace officer powers. ABC loses investigators to such agencies as DMV, Insurance, Consumer Affairs and Health Services primarily due to work environment, i.e., primarily daytime work as opposed to late hours, and weekends.

Recruitment and Retention Issues:

- Historically, ABC's peace officer vacancy rate has been 10-15% (or 15-20 vacant positions) out of approximately 150 rank and file positions.

- As of April 2007, ABC's peace officer vacancies have soared to over 21% (or 30-32 vacant positions) since the previous year.

- An additional 21 rank & file and 4 first line peace officer supervisors are currently in background with other agencies raising our anticipated vacancies to 33% over the next few months.

- Candidates choosing to test for Investigator positions with ABC have dropped over 52% (from 825 to 394) over the past two testing cycles. The number of candidates reaching the background phase of the hiring process has subsequently dwindled by 66% (from 64 to 22).

- Historically between 27-28% of the candidates who start the background process with ABC pass and accept employment with the Department. If this pattern holds true, the Department can anticipate hiring only 6 Investigators from the current list.

- The individual risks associated with the types of investigations and enforcement activities completed by ABC peace officers (i.e., disorderly premises, gang activity, fights, narcotic activity, and other felonious acts) are much greater than the mostly white collar non-violent crimes investigated by all other Departments utilizing the Investigator Classification series.

- ABC peace officers are regularly required to work late evening and early morning hours on weekdays, weekends and holidays since the bulk of the violations and disturbances that happen in and around businesses licensed by ABC occur during these times.

- All peace officers from Departments which utilize the Investigator Classification series along with the Agents from the Department of Justice or Agents of the Inspector General's Office and Department of Corrections Agents and Parole Agents generally work Monday thru Friday 8:00am to 5:00pm (or an alternate daytime work week) unless compensated with paid overtime.

Question 5 – What effects are the recruitment and retention salary differentials having on the department?

- Records reflect that ABC's law enforcement mission is being negatively impacted because of the growing number of ABC peace officer vacancies. Early indications are this trend will escalate as more tenured investigators leave.

    - Overall investigations completed are down 11%* (5,485 to 4,895)
    - Arrests made are down 26%* (2,889 to 2,193)
    - Disciplinary actions are down 7%* (2,492 to 2,311)

    *Based on a comparison of Third Quarter Statistics for FY 05/06 and FY 06/07

Question 6 – What benefits will the new licensing and compliance information technology have for the Department.

ABC has identified the following business opportunities that can be pursued by implementing the proposed solution:

- Increase efficiency and effectiveness of personnel to meet State mandates and ABC business objectives—implementation of ABC's new system provides ABC with the opportunity to improve its allocation of staff to fulfill workloads by:
    - Eliminating duplicate and manual processes
    - Improving the ability to monitor statewide enforcement activity

- Creating the ability for management to manage resources through access to accurate, real-time workload and case management activity information
- Improving statewide data accuracy and consistency.

- Increase public safety—the new system will result in more reliable and actionable information, thereby:
  - Preventing licenses from being granted in high-crime areas
  - Creating licensing efficiencies that can be re-directed to meet enforcement needs
- Reduce costs—business process costs will be reduced significantly by reducing:
  - Application processing time
  - System down time
  - Customer wait time
  - Duplicate processes

As a result, these savings can be redirected to compliance and enforcement activities as well as to a backlog of clerical duties, thus ensuring that resources can be more effectively deployed to meet increasing demands.

- Improve public access to information—the new system will enable timelier, accurate information regarding license applications, licenses and discipline history (complaints) by enabling Internet access to this information.
- Improve customer service—automating customer service and related ABC tools will increase the overall speed and accuracy of services delivered. Results include:
  - Reduced time for customers to file applications
  - Reduced application processing timelines
  - Self-service customer support and services (i.e., check application status, download application forms), including accepting credit card payments over the Web
  - Improved data integrity and security provisions
  - Automated interfaces to internal and external stakeholders (e.g., local law enforcement, Department of Justice, Employment Development Department, Franchise Tax Board, and Board of Equalization)
  - License renewal and e-commerce transactions via the web rather than in-person appointments

Question 7 – Does current law do an adequate job of discouraging minors from attempting to purchase alcohol? Is current law strict enough with respect to retailers who sell alcohol to minors?

- In my opinion, current law and statutorily mandated sanctions (fines, community service, sentencing guidelines) are reasonably stringent in regard to underage access to alcohol. Anecdotal information suggests however, there is wide disparity across California as to how local prosecutors, in their discretion, apply the law and either file or reject cases. In addition, wide disparity exists among the courts as to how the cases are finally adjudicated.

- Likewise, current laws are reasonably stringent when dealing with the sellers and furnishers of alcohol to underage persons, but disparity exists across the state with the prosecution and adjudication of the criminal cases.

- ABC disciplinary actions concerning sales of alcoholic beverages to minors are also appropriately stringent.

    - Current administrative fines range from a low of $750 to a maximum of $3,000 for a first time sales to minor violation or a fifteen day suspension.

    - A second sales to minor violation occurring within 36 months of the initial violation results in a fine of $2,500 to a maximum of $20,000 or a twenty-five day suspension

    - A third violation for sales to a minor within 36 months of the initial violation results in a revocation of the license

Thank you for this opportunity to respond to the questions posed by the Senate Rules Committee under your leadership. If you require anything further, please do not hesitate to contact me. I look forward to my confirmation hearing on Wednesday, July 18, 2007.

Sincerely,

Stephen M. Hardy

Stephen M. Hardy
Director

Dean Shelton, Chairman
California Gambling Control Commission
Statement of Goals
Senate Rules Committee

1. ***What are your goals as chair of the Gambling Control Commission? What do you hope to accomplish during your term? How will you measure your success?***

   Answer: My overall goals are to:

   - Ensure the integrity of gaming, protect patrons and the public;
   - Improve services to licensees and applicants;
   - Continue to seek alternatives to increase efficiency and effectiveness;
   - Simplify the license application process;
   - Ensure that applicants are treated fairly;
   - Uphold the laws of the State of California related to gaming; and
   - Ensure compliance with the Tribal-State Gaming Compacts.

   In order to accomplish these goals, it is essential to work in partnership with all of our stakeholders: the gaming industry, tribal governments, lawmakers, the Division of Gambling Control within the Department of Justice, and the people of this State.

   As regulators, the Commission measures success by the prevention of illegal activity in the gaming arena, equitable treatment of all parties and ensuring that only qualified people enter the gaming industry.

2. ***What have been your most significant accomplishments as chair of the Gambling Control Commission?***

   Answer: Under my leadership, the Commission has made significant strides toward adequate staffing and has improved its leadership team. I have assembled a very dedicated and experienced staff with the highest degree of integrity and professionalism.

   The Commission has a mission statement and a direction. The first Strategic Plan was developed in FY 2005-06. We are in the process of updating and improving that plan. Policies, procedures and regulations have also been developed for this relatively new Commission.

   Under my leadership, the Commission has worked very closely with the gaming industry, tribal agencies and tribal governments. We have also provided testimony at Legislative hearings. Communication and cooperation with our stakeholders is at a very high level. We have also coordinated our efforts with the Attorney General's Division of Gambling Control to avoid duplication of our efforts.

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Dean Shelton, Chairman
California Gambling Control Commission
Statement of Goals
Senate Rules Committee

3. ***What do you perceive to be the most important issues confronting the commission in both the short and long term?***

Answer:

Short Term

- Conducting Minimum Internal Control Standards reviews at tribal casinos within the next 12 months, if resources are available.
- Completing the implementation of the Technical Services Program to test gaming devices and ensure compliance with the testing provisions in the new and amended Compacts and making this a permanent program.
- Completing an internal risk assessment and response plan, concentrating resources on those risk areas that have the greatest return for our application of resources.
- Implementing the two-year license renewal program for cardrooms. (A regulatory package has been submitted to the Office of Administrative Law on June 26, 2007.)
- Identifying areas in need of improvement and finding solutions to increase efficiency and effectiveness.

Long Term

- Continue increasing the effectiveness of the Commission by implementing efficient and effective solutions, while continuing to ensure the integrity of gaming.
- Addressing any internal risk assessment findings.
- Providing additional staff training in the audit and technical areas to maintain a highly skilled staff to ensure that we are current with the constant changes of the gaming industry.

4. ***Does the commission have a formalized strategic plan which addresses general gambling activity, problem gamblers, key employees, and the continual growth and expansion of gambling within the state?***

Answer: Yes, the Commission does have a formalized Strategic Plan. Our fist plan was developed three years ago and was intended to be a basic plan. We are

currently in the process of refining and updating this plan. We plan to address issues related to general gambling activity, problem gamblers, key employees and the continual growth and expansion of gambling.

5. ***How was the commission able to work through its backlogged cases?***

Answer:

- The Commission was able to address its backlogged cases with additional staff and strong management direction. In FY 2006-07, the Commission received approval for additional positions in the Budget and was able to augment licensing staff resources in July 2006. Prior to this date, the Commission had only 0.5 positions processing Tribal Key Employee (TKE) workload. The Commission currently has 4.0 positions and a student assistant processing TKE workload including gaming resource suppliers and financial sources. Additionally, all staff were provided various training courses to assist them in their job performance.

- The Commission jointly implemented with the Division of Gambling Control an automated licensing information system (LIS). This new system decreased manual processes, increased program efficiency.

- The Commission established new processes and re-engineered existing licensing processes to streamline workload and provide accountability. This also included re-engineering the renewal background review for gambling establishments.

- The Commission hired a new management team (including two new managers) with regulatory background that enhanced the program's organization.

Future Goals:

- Online processing for licensing and renewal applications, changes of addresses and notifications;

- Online fee payments (including acceptance of credit and debit cards) for payment of renewal applications, background investigations annual fees, fines, etc.; and

- Online Complaint forms.

Dean Shelton, Chairman
California Gambling Control Commission
Statement of Goals
Senate Rules Committee

6. ***What successes or roadblocks has the technical services program had in its first year of operation?***

Answer:
In general, the Technical Services Program (TSP) development and implementation has faced obstacles due to the highly technical nature of the activity, lack of applicable State positions, and difficulty in recruiting staff for limited-term positions. The program has accomplished the following successes:

- From July 1, 2006 through January 1, 2007, the TSP went through the planning, development and implementation phases and then began reviewing Tribal compliance with testing protocols required by the new and amended Compacts.
- Developed a testing training program for staff.
- Hired and trained testing staff.
- Contracted with technical experts to identify the skill sets needed for State computer gaming device engineers and managers.
- Met with other state regulatory authorities, manufacturers, testing laboratory representatives and Tribal regulators to develop program parameters.
- Developed an industry standard electronic gaming device testing protocol.
- Began testing casino machines in April 2007.
- By July 1, 2007, tested machines at half of the primary testing program casinos.
- Staff testing efficiency is increasing as we have become more experienced.

Obstacles identified:

- As with the industry as a whole, the Commission faced difficulties in recruiting skilled staff and providing training to remain current on technology changes, with the added complexity of complying with the requirements of the state hiring process.
- The ongoing introduction of a variety of machines and new games in the many casinos require a broad knowledge base.

Dean Shelton, Chairman
California Gambling Control Commission
Statement of Goals
Senate Rules Committee

7. ***Does the commission envision a need to extend the technical services program beyond the limited two-year trial basis?***

   Answer: Yes, without a permanent program the State cannot adequately monitor the gaming device testing provisions of Governor Schwarzenegger's new and amended Tribal-State Gaming Compacts.

   - Given the significant revenues generated from gaming devices, the State needs to be competent on a long-term basis to assess Tribal regulation of the slot operation.

   - Assuring on a long-term basis that gaming devices comply with manufacturer's technical specifications and whether tribes comply with the various testing provisions in the Compacts is essential to compact compliance and protection of the gaming public.

   - As issues related to the testing of gaming devices will continue to be a high priority due to impact on State revenue, ongoing technological changes and challenges, and patron reliance on the accuracy of gaming devices, gaming device regulation will continue to be a high priority and the need for ongoing State inspection will continue.

   - The new and amended Compacts contain specific obligatory duties for the Commission to inspect machines and validate Tribe regulatory protocols that increase the testing program workload.

8. ***While the commission's staff expanded by over 50 percent in the 2006-07 budget, do you believe the commission's staff is large enough to handle the potential increased workload associated with the new slot machines and expanded gaming activity that would be authorized by the pending compacts?***

   Answer: The workload associated with the recently ratified new and amended Compacts will have the most dramatic affect on our Technical Services Program and Licensing Program. The recently ratified Compacts will require the inspection of slot machines and review of tribes' compliance with the Compact testing provisions. The Licensing Division will have an increase in workload associated with the processing of TKE applications for suitability. In addition, the Licensing Division will also need to assess applications associated with Financial Sources, Gaming Resource Suppliers and Manufacturers and Distributors. This additional workload will require additional resources. We are currently assessing our future resource needs.

Dean Shelton, Chairman
California Gambling Control Commission
Statement of Goals
Senate Rules Committee

9. ***With a possible large expansion of gaming in California, what more can the commission be doing to address the issues of problem gambling?***

Answer: While the Office of Problem Gambling within the Department of Alcohol and Drug Programs is the lead State department on problem gambling issues, as a gaming regulator I believe that the Commission has a role related to problem gambling in those areas where we have authority. To summarize our accomplishments and activities related to problem gambling, the Commission has:

- Implemented Responsible Gambling Regulations for cardrooms that provide for a voluntary self-exclusion program and a self-restriction program to assist problem gamblers. These regulations also require the posting of referral information to provide problem gambling help and require training for cardroom employees.

- Commissioner participation on the Office of Problem Gambling Advisory Workgroup, which includes other State agencies that have responsibilities related to gambling.

- Invited other State agencies with gambling responsibilities to discuss our respective strategies related to problem gambling.

- Placed problem gambling referral information and responsible gambling guidelines on our website, in coordination with OPG and other State agencies.

- Included items on the Commission's agenda to recognize Problem Gambling Awareness Week for the past two years.

In addition to continuing these activities to help address the issue of problem gambling, we will seek input on the effectiveness of our Responsible Gambling Regulations and make any necessary revisions.

10. ***What leads you to believe the new compacts currently pending in the Assembly and all previously approved compacts provide the commission with sufficient oversight authority?***

Answer: In discussions with our in-house counsel, the Attorney General's Office and the Governor's Office, we are in agreement that we have sufficient authority in the Tribal-State Gaming Compacts related to inspection of minimum internal control standards (MICS).

Dean Shelton, Chairman
California Gambling Control Commission
Statement of Goals
Senate Rules Committee

The Tribal-State Gaming Compacts are negotiated on a government-to-government basis between two sovereign nations - the State and the Tribes. The Compacts set forth the respective regulatory roles of the State and the Tribes and provide extensive authority to the State related to the MICS. As it pertains to Tribal gaming in California, "MICS" is shorthand for the rules, regulations, procedures, standards and specifications for the conduct of gaming operations adopted by Tribal Gaming Agencies under the Tribal-State Gaming Compacts. As specified in each of the Compacts, this includes the authority to review Tribes' gaming facilities and inspect gaming operations or related facility records.

All of the Compacts include provisions related to MICS – this includes the 1999 Compacts, as well as all of the amended and new Compacts negotiated by Governor Schwarzenegger. In addition to the authority provided to ensure compliance with the Compact requirements for internal controls, all Compacts also provide the Commission with the authority to conduct independent financial audits of Tribes to ensure that they make accurate revenue contributions to the State, pursuant to the requirements of the Compact.

11. How long will it take for you to develop and implement audit and internal-standard regulations for tribal casinos?

Answer: We are currently working with the Tribal-State Regulatory Association and the Tribal-State Regulatory Association Task Force to develop baseline internal control standards for all tribes. With respect to the recent memoranda of agreement, four tribes have agreed to maintain and implement internal control standards for class III gaming that are no less stringent than those contained in the Minimum Internal Control Standards of the National Indian Gaming Commission (NIGC) until such time as the State Gaming Agency has regulations in effect that contain standards as stringent as the NIGC Minimum Internal Control Standards, or the NIGC is provided with statutory authority to promulgate and enforce regulations containing such standards for Class III gaming.

We are of the opinion that we have sufficient authority to conduct reviews of the tribes' Minimum Control Standards and could conduct those reviews immediately. However, we believe that we should work with the Tribal-State Regulatory Association to establish a standard regulation for all tribes. The development of the regulation could take six to eight months. The next Task Force meeting will be held on July 11, 2007.

Stephanie K. Shimazu
California Gambling Control Commission
Statement of Goals / Responses to Questions
Senate Rules Committee

1. *What are your goals as a member of the Gambling Control Commission? What do you hope to accomplish during your term? How will you measure your success?*

As the newest member of the Gambling Control Commission, my first goal has been to familiarize myself with the provisions of the Gambling Control Act to ensure that actions taken by the Commission comply with the Act and are made in a fair and equitable manner. I hope to encourage open communications with gambling establishments and tribes by visiting establishments and meeting representatives, and attending and/or participating in meetings of gaming associations and organizations. In order to keep apprised of emerging issues in the gambling industry, I plan to attend gaming conferences and seminars, and meet with representatives from other state regulatory bodies. I also hope to assist in the movement and promulgation of new and pending regulations to establish criteria or processes pertaining to cardrooms.

The success of my goals will be measured by my actual participation in meetings, visits to cardrooms and tribal casinos, attendance at seminars and conferences, the extent of my outreach to other states' regulatory bodies, and the successful adoption of pending and new regulations. As a regulatory body, the Commission seeks to prevent illegal activity in cardrooms and casinos. Accordingly, our success is measured, in part, by the prevention of such illegal activity.

2. *What do you perceive to be the most important issues confronting the commission in both the short and long term?*

One of the most important tasks facing the Commission in the short term is to adopt a regulation via the Tribal-State Regulatory Association process establishing a minimum standard for control standards at tribal casinos and to ensure compliance with minimum internal control standards at tribal casinos by conducting inspections, if resources are available. Additionally, the Commission should continue to develop and expand its Technical Services Program. As we near the completion of the first round of audits of contributions to the Special Distribution Fund, we should build upon the success of those audits and also learn from the experience by developing a risk assessment plan that will ensure the most effective use of our resources. Moreover, we should fully implement the two-year license renewal program for cardrooms and identify other areas that would increase efficiency and the most effective use of Commission resources.

Senate Rules Committee
JUL [illegible] 2007
Appointments

Over the long term, I believe that the Commission should continue to reach out to the gambling industry and gaming tribes to discuss matters of mutual interest and address concerns that may arise between us. Such communications help build the foundation necessary to form and continue positive working relationships between us and our stakeholders. The Commission also should streamline processes where possible, continue to gain expertise and experience in its implementation of the Technical Services Program and compliance reviews of minimum internal control standards at tribal casinos, and develop guidelines or regulations for licensing issues that may need clarification. We should also develop processes for online acceptance of application forms and fee payments.

3. *Does the commission have a formalized strategic plan which addresses general gambling activity, problem gamblers, key employees, and the continual growth and expansion of gambling within the state?*

The Commission has a formalized strategic plan that was drafted in 2005. The current plan was the first developed at the Commission and focused on general issues, such as issues relating to the organizational framework, education of staff, and promotion of increased communication with stakeholders. The strategic plan is being reviewed and will be refined and updated in the near future.

4. *How was the commission able to work through its backlogged cases?*

Recognizing the need to address the backlog of applications for findings of suitability for tribal key employees, in 2006 the Commission increased its licensing staff resources. While the Commission initially had 0.5 positions processing tribal key employee applications, it currently has four positions and a student assistant processing these applications, as well as applications from gaming resource suppliers and financial sources. In order to increase productivity, licensing staff was provided additional training to assist them in their job performance.

The Commission also hired new managers who had experience working in a regulatory environment, which improved the program's organization and increased productivity. New processes were established that were geared toward streamlining the workload and providing staff accountability. The background review for gambling establishments seeking renewal licenses also was revised resulting in faster processing of the applications. Additionally, the Commission and the Division of Gambling Control jointly implemented an automated licensing information system, which decreased staff's need to manually input and process information and enhanced coordination between the Commission and Division.

5. *What successes or roadblocks has the technical services program had in its first year of operation?*

During the first six months of the inception of the Technical Services Program (TSP), the planning and development stages were completed. A training program was developed, limited term staff was hired, and technical experts were hired via contracts to train staff until the Commission could determine what skill sets would be needed for State computer gaming device engineers and managers. During the planning and development stage, Commission staff met with regulatory officials from other states, manufacturers, testing laboratory representatives, and tribal regulators to develop the program's parameters. Once an industry standard electronic gaming device testing protocol was developed and staff was trained, testing began at certain tribal casinos in April 2007.

The Commission has succeeded in building and implementing a completely new program – one that required an expertise not possessed by staff at the time. By July 1, 2007, machines had been tested at half of the tribal casinos with new or amended compacts. The testing experience has enabled staff to identify issues associated with tribal implementation of generally accepted machine maintenance practices. While the TSP is still in its early stages, staff's efficiency at testing continues to increase.

While the program has had a successful start, locating and hiring staff with the necessary skill set, and ensuring that they continue to receive training as technology changes has been somewhat difficult, and especially so given the state hiring process. The state of technology will continue to challenge staff as different types of gaming devices are introduced in casinos. Additionally, given the State's new regulatory role in the testing of devices, Commission staff had to establish new working relationships with tribal regulators and their staff. Open communication and coordination with tribal regulators, as well as experience gained on the part of Commission staff, should increase the efficiency of the program.

6. *Does the commission envision a need to extend the technical services program beyond the limited two-year trial basis?*

The Commission believes that the Technical Services Program must be extended beyond the limited two-year trial basis. New and amended compacts authorize the Commission to conduct random inspections of those tribes' slot machines and review of those tribes' compliance with compact testing provisions. Given the significant revenues generated by class III gaming devices at tribal casinos, the State must ensure that it is competent to assess the Tribe's regulation of their slot machines and do so on a long term basis as technology changes. In order to protect patrons and the integrity of gaming in California, the Commission must continue to take an active role in this area.

7. *While the commission's staff expanded by over 50 percent in the 2006-07 budget, do you believe the commission's staff is large enough to handle the potential increased workload associated with the new slot machines and expanded gaming activity that would be authorized by the pending compacts?*

The increased workload association with the recently ratified new and amended compacts will have the greatest effect on our Technical Services Program and Licensing Program. These compacts specifically authorize the inspection of slot machines and review of the tribes' compliance with the compact testing provisions. The Licensing Division will experience an increase in workload associated with the processing of additional tribal key employee applications for findings of suitability, as well as applications associated with financial sources, gaming resource suppliers, and manufacturers and distributors. We are currently evaluating the matter to determine the extent of our need for additional staff.

8. *With a possible large expansion of gambling in California, what more can the commission be doing to address the issues of problem gambling?*

Problem gambling responsibilities lie primarily with the Office of Problem Gambling within the Department of Alcohol and Drug Problems. As the agency responsible for regulating gambling establishments and overseeing certain aspects of the tribal-state compacts, however, the Commission recognizes that it has a role related to this issue. One of our commissioners participates in the Office of Problem Gambling Advisory Workgroup in which other state agencies with gambling responsibilities share information and discuss each agency's strategies to address problem gambling.

The Commission has developed responsible gambling regulations for cardrooms that provide for a self-exclusion program and a self-restriction program. The regulations also require gambling establishments to provide information regarding the nature and symptoms of problem gambling, post referral information for patrons that wish to obtain assistance with gambling problems, and require specified training for cardroom employees. Our website includes problem gambling referral information. At past Commission meetings we have had a presentation on problem gambling research and have recognized Problem Gambling Awareness Week.

9. *Do you believe the new compacts currently pending in the Assembly and all previously approved compacts provide the commission with sufficient oversight authority? Why or why not?*

The compact amendments recently passed by the Legislature and previous new and amended compacts, as well as the 1999 compacts, provide the Commission with sufficient oversight authority. The compacts require tribes or their gaming agencies to comply with their gaming ordinances, rules, and regulations, and minimum standards on specific matters. The compacts authorize the Commission to inspect tribal gaming

facilities and records to ensure compliance with the compacts, including the control standards adopted by each tribe. The compacts also provide the Commission with the authority to conduct independent financial audits of the tribes' contributions to the State to ensure that such contributions are accurate, pursuant to the requirements of the compact.

10. How long will it take for you to develop and implement audit and internal-standard regulations for tribal casinos?

The Commission continues to work toward establishing a regulation through the Tribal-State Regulatory Association to establish a regulation governing minimum internal control standards. The Association is meeting this week to develop a task force on the standards and it is anticipated that a draft regulation will be discussed at the next meeting. We hope that that we will be successful in adopting a regulation through the Association process within six to eight months.

As stated in the response to question #9, the Commission believes that it has sufficient authority to conduct compliance reviews of all tribes' internal control standards and could conduct those reviews immediately. In an effort to ensure coordination and cooperation from gaming tribes, however, we believe that it is appropriate to work with the tribes and develop a regulation via the Association process. Additionally, the regulation will establish a baseline standard for all tribes' internal gaming controls, which does not currently exist.

Please note that the recent memoranda of agreements with four tribes provides that the tribes will maintain and implement minimum internal control standards for class III gaming that are no less stringent than those contained in the standards of the National Indian Gaming Commission (NIGC), as they existed on October 19, 2006, until such time as the State Gaming Agency has regulations in effect that contain standards as stringent as the NIGC standards.

STATE OF CALIFORNIA-THE RESOURCES AGENCY
ARNOLD SCHWARZENEGGER, Governor

BOATING AND WATERWAYS COMMISSION
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Raynor Tsuneyoshi
Secretary

July 2, 2007

The Honorable Don Perata
Chairman, Senate Rules Committee
State Capitol, Room 420
Sacramento, CA, 95814-4900

Attn: Nettie Sabelhaus
Rules Committee Appointments Director

Dear Mr. Chairman:

Your letter of June 15, 2007 asks several questions in consideration of my confirmation as a member of the Boating and Waterways Commission.

Statement of Goals

1. *What do you hope to accomplish during your tenure as a member of the Boating and Waterways Commission? What goals do you have for the commission and how will you accomplish them?*

   Response:

   I have three primary goals for my service on the Boating and Waterways Commission: (1) improving public access to our waterways; (2) ensuring available funding for both new and aging infrastructure projects; and (3) promoting boating safety.

   (1) According to the *Statewide Boating Needs Assessment 2000–2020*, conducted by a consortium of university and consultant groups, there is a need for $837 million for new and upgraded public-access boating facilities in California. The Department of Boating and Waterways helps meet this demand by providing loans, grants and capital outlay funds for the construction of small craft harbors and boat launching facilities. Boating facilities that were built in the 1960s and 1970s are now in need of improvement, enhancement, or expansion to meet increased demands for recreational boating from California's growing population.

The Boating and Waterways Commission must approve all department loans to local agencies and businesses for the construction of small craft harbors and all grants to public agencies for the development of boat launching facilities.

During our deliberations, we require that loan and grant applicants attend our public meeting to discuss the various aspects of the project. During the last year, we have heard from both public and private representatives that there is demand for new and renovated boating facilities for improved public access throughout the state. Good examples of this are three projects in need of substantial department funding for the improvement of their marina facilities: the Dana Point Marina (County of Orange), the Long Beach Marinas (City of Long Beach) and the San Francisco Marina (City of San Francisco). For the smaller boats, there is equal need for new or improved boat launching facilities for anglers, water skiers, personal watercraft users, and smaller sailboats and paddle craft. Currently, the Department has identified a need for nearly $90 million in boat launching facility improvements over a five-year period.

(2) The Department of Boating & Waterways is an enterprise agency outside the State's General Fund. In recent years, because of decisions to redirect funds from the department's Harbors & Watercraft Revolving Fund, the Department has not had the financial resources sufficient to meet the needs of the boating community, including the infrastructure needs discussed above. Because of shortages in the Revolving Fund, for example, the Department has had to stretch out the funding for the three marina projects mentioned above. As a result of project delays, construction costs have escalated, prompting requests for additional funding. My second priority, therefore, is to work with the Administration, the Legislature, and interested parties to ensure that adequate funding is available for department programs.

(3) My third goal is to promote on-the-water boating safety, education, and law enforcement. Boater related fatalities so far this year exceed those of last year. I endorse the Commission supporting measures that will enhance boating safety and reduce the number of boating accidents, injuries, and fatalities. I also support the idea of the Commission taking positions on legislative bills that would have a material impact on boating safety. For example, I favor boat operator certification consistent with the approach contained in AB 1458 (Duvall).

Advice to the Department

2. *How does the commission carry out its role of advising the department? Has the commission developed a list of priorities and presented it to the department? Please describe.*

Response:

It is my understanding that the Governor wants appointees to boards and commissions to be active and independent in performing their duties. In my service on the Commission, I intend to meet these expectations.

The Commission is charged with advising the Boating and Waterways Department on all matters within the jurisdiction of the Department. The Commission must also review and approve loans and grants proposed by the Department for boating facilities. The Commission has a practice of requiring a site visit by at least one commissioner prior to bringing the proposed loan or grant to the commission for action.

Each small craft harbor loan and boat launching facility grant is presented to the Commission for its advice and consent at a public meeting held in different areas of California. The applicant, either a public agency or a business, is required to attend the meeting when the proposed project is presented to the Commission.

For the consent of small craft harbor loans to local agencies and private businesses, the Commission reviews and provides advice on the following elements to ensure that the project is developed in a fiscally prudent manner:

- Ability of the borrower to repay the loan, project financial feasibility, market demand, sufficiency of collateral, vessel berthing rates and how they are computed, proposed berthing rate versus market rates, operation and maintenance practices, loan repayment and contractual terms and conditions.

For the consent of boat launching facility grants to public agencies, the Commission reviews and provides advice on the following elements:

- Demand for the facility, project costs, size and components of the facility, operation and maintenance practices, and cost to the boater to launch at the site.

In regard to advising the Department on all matters within its jurisdiction, the Commission has established, from time to time, committees on various program areas. For example, the Commission has established a two-member committee related to a loan dispute issue concerning Sonoma

County and the Spud Point Marina, now in the process of successful resolution.

In addition, the Department provides briefings to the Commission about its programs and issues. The Commission, in turn, provides advice to the Department on such matters by expressing informal or written support or opposition, as appropriate.

The Commission has not provided a list of priorities to the Department. However, I believe that it should. To that end the Department has agreed to place its Strategic Plan on the agenda of the next Commission meeting.

3. *Under what circumstances would the commission not approve a loan or grant proposed by the department?*

Response:

In my opinion, the Commission would not approve a loan proposal if it believed that one or more of the following critical elements were deficient or missing:

> Ability of the borrower to repay the loan, project financial feasibility, market demand, sufficiency of collateral, vessel berthing rates and how they are computed, proposed berthing rate versus market rates, operation and maintenance practices, loan repayment and contractual terms and conditions.

Similarly, in my opinion, the Commission would not approve a grant proposal if it were not satisfied that the project met reasonable criteria related to:

> Demand for and access to the facility, project costs, size and components of the facility, operation and maintenance practices, and cost to the boater to launch at the site.

Equal Access

There have been complaints that there is not equal access at some marinas that have received state grants. Concerns have surfaced from people who have been on waiting lists for boat slips at marinas and have seen other persons with connections or celebrity status move to the front of the line. The Harbors and Navigation Code requires facilities in harbors and connecting waterways to be open to all on equal and reasonable terms. The

commission had a report done on this issue last year that has not yet been released.

4. *When do you expect the commission's report on equal access might be released to the Legislature and the public?*

Response:

At a meeting in 2006, after considerable discussion, the Commission voted to recommend that the Department undertake a study to research and report upon the issues addressed in this question. A draft report was completed and it is presently being reviewed by the Administration. I cannot provide an exact date when the report will be released publicly. When this report is released, by the Administration, I believe that it and the question of equal access should be the subject of discussion and appropriate action by the Commission, giving the public an opportunity to address concerns and give opinions.

Public Trust Responsibilities

The state and its departments, boards, and commissions have a responsibility to protect public trust resources, such as water quality, fish, and wildlife resources.

5. *What types of mitigation does the commission require in order to approve boating or waterway grants?*

Response:

The Commission's primary responsibility is approving access in environmentally acceptable locations. Mitigation, if necessary, is determined during the California Environmental Quality Act (CEQA)/National Environmental Policy Act (NEPA) process. The Commission does not typically require mitigation in excess of what the law requires. The law requires that all projects meet CEQA and/or NEPA for funding to occur; the Commission approves funding to cover any mitigation when it is feasible for the State to pay and requires the local entity to fund mitigation when it is not.

The Commission requires the Department and/or local entity to research environmentally acceptable alternative locations for new and existing projects as part of the application process.

Listed below are Department's programs that provide outreach or financial assistance to local agencies for water quality issues:

- Abandoned Watercraft Abatement Grants
- Boating Clean and Green Campaign
- "Boating Trails" Access Construction for Non-powered Vessels (Paddlecraft)
- Vessel Sewage Pumpout Facility Grants
- Multi-Media Outreach, Vessel Sewage
- Floating Restroom Grants
- Coastal Public Beach Restoration Grants

The aforementioned grants or programs are not required to be approved by the Commission; however, the Commission has advisory capacity over these programs. Many applicants will apply for these department programs independent of the loans and grants that the Commission is required to approve. For example, a city may apply for a small craft harbor construction loan that the Commission will consider for approval; the same applicant may apply for a vessel sewage pumpout facility for the same harbor area in a separate application.

As a separate and individual initiative, fellow Commissioner H. P. "Sandy" Purdon was key to the creation of the Clean Marina California Program—a partnership of private marina owners, government marina operators and yacht clubs. The program provides inspection and certification to assure clean facilities for the boating community and to protect the state's waterways from pollution. Commissioner Purdon, in May of this year, was awarded the BoatUS Foundation's National Environmental Leadership Award for his efforts. I am actively assisting in the promotion of this program in my region.

The Commission supports the Department's research of alternative construction methods such as "push slab" technology, and advises on use of materials such as concrete in place of treated lumber in projects.

I trust that my reply has been responsive and helpful. If you have need of further information, please let me know.

Sincerely,

Douglas W. Metz

CALIFORNIA LEGISLATURE

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SECRETARY OF THE SENATE
NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

June 22, 2007

David T. Hodgin

Dear Mr. Hodgin:

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the Central Coast Regional Water Quality Control Board on Wednesday, July 18, 2007. At this time you are not required to appear, but if we receive formal opposition to your appointment, you will be asked to appear before the committee.

We would like to receive an updated Form 700, Statement of Economic Interest, by July 9th. A copy of the statement you submitted to us earlier is enclosed so that you may review it for any changes that might have occurred.

Following are questions we would like you to address in writing prior to the hearing. Please respond by July 9th so committee members will have sufficient time to review the material before your hearing.

Statement of Goals

1. *What do you hope to accomplish during your tenure as a member of the Central Coast Regional Water Quality Control Board? What goals do you have for the board and how will you accomplish them?*

2. *What do you believe are the most serious problems facing your regional board?*

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State and Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, particularly considering these are part-time positions.

3. *Do the state board and your regional board staff assist you to better understand some of the complex issues before you if you request help? If not, where do you seek help when you need it? Do you have any suggestions on how the state water board's staff might better assist you?*

4. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop Total Maximum Daily Loads (TMDLs), and enforce permit and discharge requirements as well as state and federal water quality laws. However, regional board budgets are not reviewed individually by the Governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided through the state board appeals process instead of through a consistent statewide policy that is proactively established by the state board and implemented by the regional boards.

5. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?*

6. *How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?*

Cleaning Up Polluted Waters

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal storm water permit programs and Total Maximum Daily Load (TMDL) programs, which are required under the Federal Clean Water Act to improve water quality by limiting the amount of pollutants allowed into water bodies.

Currently, regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

7. *Please describe the status of your board's TMDL process. Does your board have adequate resources to develop and implement the required TMDLs?*

8. *How will the board monitor and enforce the TMDLs it has or will adopt?*

Enforcement of Water Quality Laws

Two years ago the office of the secretary of Cal-EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards were among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never sought criminal penalties for serious violations, and generally did not aggressively pursue violators.

9. *What enforcement options do you believe provides the most effective tools for violations of board orders?*

10. *What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?*

Los Osos Septic System Prohibition Zone

Since 1988 onsite septic systems have been prohibited in the Los Osos area south of Morro Bay. Fecal coliform bacteria has migrated from the shallow groundwater around Los Osos to the Morro Bay Estuary. The solution was to construct a community sewer system which has never been completed. At its May 2007 hearing, the board was still considering cease and desist orders from the 1988 prohibition.

11. *Why has it taken 19 years for the board to deal with prohibited septic systems in the Los Osos area? How is the board dealing with the issue, and what is its timeline for a solution?*

Perchlorate

When previous Central Coast Regional Water Quality Control Board members came before the Senate Rules Committee, they discussed a perchlorate plume that stretches seven miles from Morgan Hill to the outskirts of Gilroy. That plume has now grown to 9.5 miles. At the time, a number of drinking water wells had to be taken out of production because of perchlorate contamination.

Since then, a number of cleanup and abatement orders have been issued that require cleanup and remediation of perchlorate contamination. The orders also include requirements for dischargers to supply uninterrupted replacement water to effected well owners.

12. *What steps is your board taking to address the perchlorate problem? What types of monitoring and groundwater treatments has the board ordered?*

13. *Has the Morgan Hill to Gilroy perchlorate plume been stabilized? Have any additional drinking water wells been affected by the plume, including municipal wells?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your assistance.

Sincerely,

DON PERATA

DP:KW

Responses from David T. Hodgin

Statement of Goals:

1. ***What do you hope to accomplish . . ?***

I hope to bring a balanced view to Board decisions, using my training and experience as a Certified Management Consultant to add ideas on expediting resolution of issues concerning the public and recommending methods to most effectively utilize the resources available.

What goals do your have . . .?

To add to my knowledge of water issues by being exposed to more experts in the field as well as by needing to study the wide range of issues that come before the Regional Water Quality Control Board. This experience should build my knowledge of water related issues in California and increase my ability to be an effective guardian of our water resources.

I am also concerned that process can unnecessarily hinder action, adding to the waste of time and money better spent in resolving issues. I expect to be a valuable advocate of getting the publics business done in as timely a fashion as practical.

2 ***What do you believe .. most serious problems . . . ?***

The range of problems on which the Regional Board needs to take action is extensive. The most serious issue is how to service the various needs in a timely fashion with the staff and financial resources available. Setting priorities is a constant issue.

The availability of potable water on the Central Coast is severely limited. Sufficient rainfall is available in some parts of the region. However, inadequate storage makes shortages inevitable during the extended dry season. Other areas historically have limited water availability. Underground reserves have been over used in many areas. The need to accommodate a growing population exacerbates water shortages and yet we must find a way to provide a safe and adequate supply. Protection of the potable water we do have is critical. Preventing degradation of our existing supply is an

absolute necessity. Corrupting factors already in place require removal of isolation.

During my six month service on the Regional Board, the following issues seem to me to be the most urgent:

a. Resolving the sewage treatment needs of the Los Osos community.
b. Reducing percholorate and other ground water contaminants to a level that meets the minimum standards now in place.
c. Getting an effective storm water plan in place in every community.
d. Assuring that all new developments are designed and operated to be zero polluters.
e. Effectively monitoring all the waterways in the region on a frequency adequate to build a database to use in identify problem areas and spotting negative trends.

State and Regional Board Roles

3. Do the state board . . . assist to understand . . . ?

Yes. I have found staff very helpful. The Board Chairman and staff have all been very responsive to any questions. I have made some suggestions for additions to the Board Member Orientation Binder.

4. What training have you received . . . ?

I have taken the online ethics training and have had similar training provided by ACWA and by my professional association, the Institute of Management Consultants. I have also attended classes on the Brown Act and have had the guidance of the legal counsel for the Scotts Valley Water District.

Philip Wyels of the Water Board spent a half day with me in my home town, to review conflict of interest issues and how to deal with the unique dual role of the Regional Board in fulfilling its legislative and judicial responsibilities. Further guidance has been provided by Lori Okun.

I removed myself only once so far. There could have been the perception of a conflict due to acquaintance with a property owner and because I also serve as President of the Scotts Valley Water District which was involved in the issue.

5. ***. . . relationship between state board and regional board?***

Being very new on the regional board, I have not yet experienced any relationship issues. In the last few months we have benefited from a visit by the state board chair and with regular participation in our meetings by a state board member. The relationship seems to me to be positive.

On the issue of at what governmental level issues should be handled, I am likely to side with those wishing to keep review and enforcement as close to the effected citizens as possible. Uniformity can be good but local knowledge is often of greater importance.

I have not yet observed a problem with coordination and accountability.

6. ***How is your board able to address . . . ?***

It seems that issues are being addressed and regulations enforced. What appear to me to be unreasonable delays in resolving issues and providing permits are likely exacerbated by existing staffing levels. I'm hoping to learn more about the ways in which staff utilize their time. Efficiencies may be available but I am too new to have formed an opinion.

Undoubtedly some issues do not receive as much attention as they deserve. More resources would be helpful. However, that is often the case in every activity. This may be a case where the best solution is to accomplish as much as possible with the resources available, understanding that perfect attention to every issue may not be obtainable.

Cleaning up Polluted Waters

Responses from David T. Hodgin

7. ***Please describe the status . . .***

The current process seems quite capable of developing and implementing TMDLs for the most important water and water quality issues.
TMDL program staff retain the responsibility for tracking implementation and monitoring water quality for TMDLs being implemented. To accomplish this in a timely manner, previously approved TMDLs are transferred to staff responsible for the specific pollution control programs affected.

Current resources appear to be able to work with as many as three watersheds every couple of years. Although it would be desirable to have the resources to do more, staff seems to be making progress toward our goal of having all watersheds within the region function in a healthy, sustainable manner.

8. ***How will the board monitor . . . ?***

It appears to me that the board already monitors and enforces the TMDLs it has in an effective manner. Elements are incorporated in most phases of the board's activities, whether permitting, compliance, evaluating discharge practices or in its various educational efforts.

An attempt is being made to improve monitoring and enforcement by increasing coordination with other agencies and public interest groups, attempting to make each aware of the issues of concern to us and where efficiencies can be obtained by limiting duplication of effort. An example is utilizing language in regulations produced by others to limit misunderstandings and make it more intuitive for the public to meet required standards.

Enforcement of Water Quality Laws

9. ***What enforcement options do you believe . . . ?***

I believe in consistent and rapid enforcement. The most effective enforcement stems from having very clear expectations, quickly

assessing small (warning) fines for early infractions, notifying violators of more severe enforcement pending if the board does not believe every reasonable effort is being made to comply within a specific time frame. The point is to achieve full compliance, not to focus on punishment.

10. What role do you believe . . . ?

As stated above, I am uncomfortable with assessing heavy fines or other penalties unless it is clear that the polluter is not doing everything possible to resolve the problem in a timely manner or the fines are needed to fund cleanup requirements.

Los Osos Septic System Prohibition Zone

11. Why has it taken 19 years . . . ?

Some individuals in the Los Osos community apparently have fought an effective delaying action through a series of requests for more time, voting out the board of their community services district, the threat of lawsuits and actual suits. It has bee fascinating to study what has happened over the years, .despite the appearance of a majority who take the pollution issue seriously and want to resolve the issue. There does appear to be a lot of inaccurate information circulating, which has confused residents.

The major issues seem to be "What will it cost me?"; "How can I afford that much?" and "I want the treatment facility to be located somewhere else (not near my house)."

Since I have been on the board, we have heard a great deal of testimony, much of it irrelevant to the issue at hand. Clearly, this is a very emotional issue for a large number of Los Osos residents; to the point that some are so wound up in defending their position in old battles they do not accept the current situation.

The regional board has accepted a request from the County of San Luis Obispo to stop further action for the moment, allowing the County to attempt to resolve the issue by conducting another project review and by holding an election this fall to authorize a

bond to pay for much of the cost for a treatment facility and related distribution system. The County presented to the board a summary of the project status on July 6th and is expected to provide a detailed progress report on September 7, 2007. If all goes as planned, a treatment system could be in place by 2010. If the proposed bond does not pass, the regional board will have a very difficult situation with which to deal. The atmosphere in Los Osos is already divisive. The strong action that may become necessary seems likely to create a pitched battle.

Perchlorate

12. ***What steps is your board taking . . . ?***

This location is characterized as the "Olin" site. Since I joined the board, we have received updates on the cleanup efforts but I am not aware of any new action. It appears that safe drinking water is available to all users in the area. Olin has increased the capability of its treatment facilities. The City of Morgan Hill is concerned that its perchlorate removal efforts have proven costly and is seeking cost reimbursement. My understanding is that the board is unable to help with this issue and the city must deal directly with those responsible for cleanup.

It appears to me that Olin may not be responsible for all the perchlorate problems in the area. However, I have not heard any testimony that identifies any other responsible party. It seems that Olin is attempting to deal with the problem in a reasonable manner. This includes submitting additional cleanup plans, currently under review by water board staff. I am hoping to be able to review in September new monitoring requirements, along with a performance schedule.

13. ***Has the Morgan Hill to Gilroy perchlorate plume been stabilized?***

It may be stabilized. No fresh contamination discoveries have been reported in the area recently. Clean up efforts appear to be gaining ground including the cleanup of the supposed source area at the Olin site. Most wells appear to indicate a reduction in

perchlorate levels. Identified water sources testing at greater than 6 ug/L levels are being mitigated either through treatment at the well head or by means of an alternate source of clean water provided by Olin.

July 9, 2007

Gary Shallcross
Appointee to the Central Coast Regional Water Quality Control Board
Response to Senate Rules Committee Questionnaire

Statements of Goals

1. What I hope to accomplish in my tenure as a member of the Central Coast Regional Water Board can be characterized in three broad categories: Just implementation and enforcement of the Clean Water and the Porter-Cologne Act, cooperation with stakeholders and dischargers, and education.

a. Implementation and enforcement. – As a regulators and enforcers it is imperative that members of the Regional Water Boards conduct these duties in a just and reasonable matter. One of the great strengths of the Boards is the diversity of Board members who bring views from disparate areas of expertise – business, environmental, socio-political, and scientific. I hope to maintain and increase the level of credibility and fairness that in which the Central Coast Regional Board acts by making sure that all interests given an opportunity for input so that regulatory and enforcement actions by the Board are based on the best scientific date as well as a responsible balancing of the various legitimate interests in our work. This will lead to a greater respect for the goals of maintaining and enhancing water quality.

b. Cooperation with stakeholders and dischargers. – I would like to expand the success that our Board has had with its Agricultural Waiver program to other programs. The success of this program was based on the Board and staff seeking out and bringing the dischargers and other stakeholders into the development process at a very early stage. I would like to be instrumental in identifying similar opportunities and helping establish this as a regular way of doing business for the Board and staff.

c. Education – A large part of meeting water quality goals is based on education of the public, dischargers and other stakeholders so that we have better outcomes in our regulatory efforts and less need for enforcement. I hope to continue supporting sound education programs through the Board's grant funding powers and by identifying and providing Board run workshops so that the public, dischargers and stakeholders can more fully understand the importance of our role to address water quality issues.

My goals for the Board are to find better ways to communicate the importance of water quality to the people of our region. In addition, the staff and Board members themselves can be more aware of the impact that our actions have on the region – both in how we communicate and in the soundness and consistency of our actions. When I was chair of the Board several years ago I instituted one half-day meeting a year to address these types of issues. This has been a great tool for the Board and staff to look at and discuss our effectiveness in all areas.

Senate Rules Committee
Appointments

2. Significant accomplishments. – As I mentioned above, I instituted a half-day workshop for the Board to look at issues regarding our goals and how we can improve our effectiveness and communication. Our Agricultural Waiver program is probably one of biggest and most successful accomplishments of our Board. With a background in public policy and working with disparate stakeholders I have been working on bringing an awareness to our staff (made up mostly of engineers and scientists) of social and political (with a small "p") implications of how they present information, enforcement, and other regulatory actions to the public and dischargers. In addition I have been instrumental in working out fair and equitable resolutions to several of the difficult enforcement issues that have come before the Board.

3. Serious problems – One of the most serious problems facing the Board internally is the lack of flexibility in moving staff from one project to another to address changing needs. An example of this is that we are allotted 6/10 of a PY to administrate our Timber Harvest Waiver. This has resulted in the timber harvesters having to wait too long for permits because of the lack of staff hours to do everything that is required to administer this program, including on site inspections, reviewing permits and enforcement of violators. Externally, one our most serious problems is the lack of education by the public and regulated community in water quality issues and what the role of the Board is in implementing the Clean Water Act and Porter-Cologne.

State and Regional Board Roles

4. Both the State Board and Regional Board have been exceptionally responsive to requests for information both on the issues presented by a particular case and on broader policy issues. In addition both staffs have been very good at providing extra information on issues that are likely to come up in the near future. In the last several years the state water board staff has been much more visible and available to Board members. There seems to be a real interest on the part of staff to bring the relationship between the state and regional boards to a higher level of interaction.
5. Both our own attorney, Lori Okun and the state board attorney, Phil Wyles, have been available to address conflict issues. In addition we are sent frequent memos and other information, such as reports of conflict issues on other Boards so that we can better identify these issues when they arise.
   Whenever there is the least possibility that I may have a conflict or appearance of bias I consult with our attorney. I never guess on my own if a conflict is present. I have recused myself a few times in the past seven years to avoid the appearance of bias. Even though my connection with these cases was minimal and had not risen to the level of conflict our attorney felt the better way to go was to recuse myself to avoid the appearance of bias. This leaves a cleaner record for the action taken by the Board.
6. As I mentioned above it is the State Board, not the Regional Board that allots how many PYs the Regional Board get for any particular program. This is frustrating

for staff and Board members when changing conditions would call for a shift in these allotments. This is one area where there Regional Boards should have more input.

Having said that, I feel the relationship between the State and Regional Boards is relatively good, especially in the last few years. We have had both the Chair of the State Board and the Executive Director attend a workshop in our district and our State Board liaison, who has attended nearly every on of our meetings, has been very responsive in communicating issues and information from and to the State Board. Increased communication between the State and Regional Boards is important to achieve higher levels of coordination and accountability, but there seems to be a lack of communication between Board members of different Regional Boards. We have a Water Quality Coordinating meeting once a year for all of the Regional Boards but there needs to be a more on-going communication between the Regional Boards. I have recommended this in the past; however, with the increased communications open between the State and Regional Boards it seems like a good time to bring this issue up again.

I think it might be a good time to revisit the water quality policy-making structure. There may be some policy issues that are more appropriately established at the state level because those issues do not change from region to region.

7. Of course, every agency can use more money. And the Regional Boards are no different. With the current funding our Board needs to very carefully select priorities. This is not a bad thing necessarily. We are very conscious of our budget and take it very seriously. While we are able to do the tasks required of us, unfortunately for water quality and the regulated community it often takes much longer we and others would like. So, while permits are issued, they may not be issued in the timeliest manner. Enforcement also suffers because of the great staff time required for enforcement only the most egregious cases are brought to the level of escalated enforcement. Not only does water quality suffer but consistency in enforcement between regions also suffers.
8. I think we are doing a fairly good job with the current funding when compared to other Regions. I checked with staff and discovered that on an annual basis our board has funding to develop TMDLs for about two to three watersheds every two years, to initiate implementation for about two to three watersheds every two years, and to track implementation and water quality improvement progress for two to three watersheds every three years.

   This seems slow and more funding in this area would obviously lead to faster implementation. However, given our resources our Board employs other, related programs to address water quality issues that the TMDL implementation would address, so that we can use more of our TMDL funding for TMDL development. Our Agriculture and Timber Harvest Waiver programs are addressing TMDL implementation issues not only in watersheds where TMDLs are established but also watersheds where TMDLs are not yet implemented.
9. Our Board is currently monitoring and enforcing TMDLs. We use a host of tools accomplish this. TMDL allocations are included in permits and we utilize pre-existing monitoring programs where appropriate. There is a three-year

evaluation in each TMDL implementation plan so that the Board can monitor the TMDL implementation effectiveness. In addition we are increasing cross-agency partnering to increase our effectiveness in the enforcement of TMDLs.

Enforcement of Water Quality Laws

10. The preponderance of those violating Board orders are businesses and government agencies. The majority of violators respond quickly to Notices of Violation, which are the first and lowest level of enforcement available to the Board. In these cases this lowest level of enforcement is successful in obtaining compliance. In some cases where compliance is not forth coming on Notices of Violation the Board must resort to Cease & Desist Orders, Clean Up or Abatement Orders, or Administrative Civil Liabilities. In most cases the effective tools are those that educate the violator and assist them in achieving compliance. However, in some cases, it seems only financial penalties work to achieve compliance and continued attention to water quality requirements.
11. Fines and penalties play an important role in enforcing our water quality laws. If there is no ultimate financial disincentive, compliance becomes voluntary and more costly than non-compliance. Businesses and government jurisdictions pay attention to punitive monetary penalties. Fines and penalties are also important to send a message to other would-be violators and to impress the importance of obeying water quality regulations.
    One of the main obstacles to aggressive enforcement has been the inordinate amount of staff resources needed for effective enforcement. Staff time spent in enforcement is staff time not spent on developing permits, reviewing monitoring reports, etc. Difficult decisions on whether or not to prosecute and at what level unfortunately come down to staffing levels. I believe this is why staff is sometimes reticent to go beyond the Notice of Violation level of enforcement unless the violation is particularly egregious.
    Monetary penalties may not be appropriate when the violation is out of control of the violator or when the only choice is between imposing a penalty and obtaining compliance, as in the case of small businesses that cannot afford to do both.

Los Osos Septic System Prohibition Zone

12. The Los Osos situation has been one of the most difficult for our Board to deal with. The underlying difficulty is that the violator in this case is not a business or government entity but an entire community of 15,000 people. Every time the Board has threatened enforcement, headway toward a project has been made. Each time a large group of citizens in the community has stopped the project at various stages, through litigation, seeking to form a Community Services District, and a recall election. There is a large group of citizens in this community who do not want a waste water treatment plant because they feel it would stimulate development. They have utilized every tool at their disposal to stall and stop projects.

Currently, after this Board started enforcement proceedings against all 4500 parcels in the prohibition zone, the project has been re-started by San Luis Obispo County after the failure of the Los Osos Community Services District to build a plant. The County has committed resources and is on track to complete the project by 2012. They have established a Technical Advisory Group and are moving aggressively in the right direction. The next important date with be the Prop. 218 vote that will take place this fall in which the property owners will vote to (at least partially) fund this project. The success of this project hinges on this vote. Unfortunately there are those in the community who are already campaigning to defeat the vote. We are hopeful, however, that with this last round of enforcement by the Board and consequent education of the community as to what is at stake, there will be a successful 218 vote.

Perchlorate

Your statement that the plume has grown from 7 miles to 9.5 since the last confirmation hearings is not correct. The difference is that between then and now the southern end of the plume has been defined – so we have more information. The plume has taken about 50 years to achieve its present dimensions.

13. For the Olin site, we issued MRPs (monitoring and reporting programs in 2001 and 2003). These monitoring and reporting programs require Olin to evaluate the stability of the groundwater plume and monitor concentrations in numerous monitoring wells on a quarterly basis.
Clean Up or Abatement Orders were issued to require Olin to provide replacement water to well users with wells that have perchlorate concentrations greater than 6 parts per billion (ppb). Our Board originally required replacement water for well users with wells that had perchlorate concentrations greater than 4 ppb but the State Water Board revised the concentrations to 6 ppb (the new California Public Health Goal). Our staff reviews monitoring data for all wells to make sure that Olin is in compliance with Regional Board and State Board orders. Olin has also installed ion exchange systems on 16 wells to comply with the order – these are higher volume wells serving multiple residences. Under our Board's enforcement of this case no well user in the Morgan Hill, San Martin, or Gilroy area is drinking groundwater with perchlorate concentrations greater than 6 ppb.
Olin began operating a groundwater treatment system in February 2004 at the site of the origin of the perchlorate. The onsite system provides containment of groundwater and removes perchlorate from onsite groundwater. Olin's treatment system has treated 178 million gallons of perchlorate containing water as of May 2007, and continues to operate continuously.
In addition, Olin successfully remediated onsite contaminated soils, thereby removing the perchlorate source from site soils.
The City of Morgan Hill's Tennant Ave well is located near the Olin site. The Tennant Avenue well currently has perchlorate concentrations slightly higher than 6 ppb. Olin paid the city for a replacement well.
The Board also requires additional characterization of perchlorate in the groundwater basin, a cleanup strategy, background determination, and a cleanup

goal for perchlorate. We have directed Olin to expand existing remediation to remediate the next highest concentrations of perchlorate south of the Olin site, immediately. Board staff is currently reviewing several long term cleanup work plans submitted by Olin. The installation of groundwater extraction wells south of the site will be in operation within one year from now. We are currently preparing a new CAO that will include a time schedule and performance monitoring requirements for the additional cleanup measures.

14. Since the beginning of remediation the general trend in a decrease of perchlorate in wells throughout the plume area. The sources of perchlorate in the soil and groundwater near the Olin site are well on their way to being eliminated. And the hotspots south of the Olin site are being remediated. No additional wells have been affected.

CALIFORNIA LEGISLATURE

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DON PERATA
CHAIRMAN

June 22, 2007

Cheryl K. Maki

Dear Ms. Maki:

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the Central Valley Regional Water Quality Control Board on Wednesday, July 18, 2007. At this time you are not required to appear, but if we receive formal opposition to your appointment, you will be asked to appear before the committee.

We would like to receive an updated Form 700, Statement of Economic Interest, by July 9th. A copy of the statement you submitted to us earlier is enclosed so that you may review it for any changes that might have occurred.

Following are questions we would like you to address in writing prior to the hearing. Please respond by July 9th so committee members will have sufficient time to review the material before your hearing.

Statement of Goals

1. *What are your goals and objectives as a member of the Central Valley Regional Water Quality Control Board? What do you hope to accomplish during your term? How will you measure your success?*

2. *What do you believe are the most serious problems facing your regional board?*

Senate Rules Committee

JUN 28 2007

Appointments

STATE CAPITOL • ROOM 420 • SACRAMENTO, CALIFORNIA 95814-4900 • (916) 651-4151 • FAX (916) 445-0596

State and Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, particularly considering these are part-time positions.

3. *Do the state board and your regional board staff assist you to better understand some of the complex issues before you if you request help? If not, where do you seek help when you need it? Do you have any suggestions on how the state water board's staff might better assist you?*

4. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop Total Maximum Daily Loads (TMDLs), and enforce permit and discharge requirements as well as state and federal water quality laws. However, regional board budgets are not reviewed individually by the Governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided through the state board appeals process instead of through a consistent statewide policy that is proactively established by the state board and implemented by the regional boards.

5. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?*

6. *How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?*

Cleaning Up Polluted Waters

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal storm water permit programs and Total Maximum Daily Load (TMDL) programs, which are required under the Federal Clean Water Act to improve water quality by limiting the amount of pollutants allowed into water bodies.

Currently, regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

7. *Please describe the status of your board's TMDL process. Does your board have adequate resources to develop and implement the required TMDLs?*

8 *How will the board monitor and enforce the TMDLs it has or will adopt?*

Enforcement of Water Quality Laws

Two years ago the office of the secretary of Cal-EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards were among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never sought criminal penalties for serious violations, and generally did not aggressively pursue violators.

9. *What enforcement options do you believe provides the most effective tools for violations of board orders?*

10. *What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?*

Salinity Management in the Central Valley

One of the most pressing problems in the central valley is the buildup of salt in both surface water and groundwater. While some salts occur naturally, others are discharged into water as a result of food processing—everything from tomatoes to cheese, fertilizer application, and wastewater treatment. In high concentrations, salt can kill crops and cause deformities in animals, among other problems. The central valley regional board is beginning to develop a salinity management plan that will take several years to finalize.

11. *How will you determine the severity and scope of this problem? Can you act in a timely manner to address the problem? What approaches will the board use? Please explain.*

Union Pacific's Trestle Fire

On March 15, 2007, the trestle supporting the Union Pacific Railroad's southern approach to the American River Bridge in Sacramento caught fire. Board staff expressed concerns regarding the firefighting water runoff to adjacent surface water drainages, wetlands, and the American River. Regional board staff is scheduled to meet with Union Pacific representatives to discuss the scope of the investigations.

12. *What are the preliminary findings on the impact to water quality of Union Pacific's trestle fire? What types of further investigations need to be conducted to determine the extent of water quality damage? What was done immediately to determine water quality?*

13. *Board staff began to discuss the potential effects of the fire suppression activities on water quality with Union Pacific and firefighters on March 16, 2007, the day the fire restarted when the fire damaged trestle was knocked down. What, if any, is the board's role in discussing with the various fire departments in the region strategies to minimize water quality impacts caused by firefighting activities?*

Agricultural Waiver

In 2002 and 2003 there was controversy over how the board dealt with the agricultural waiver, or irrigated lands conditional waiver program. On June 2, 2003, the attorney general's office opined that, because there was concern that the waiver proceedings had been irreparably tainted by a potential or actual conflict of interest, it was recommended that the State Water Resources Control Board remove the issue from the Central Valley Regional Water Quality Control Board and place it under the state board's jurisdiction. Eventually the regional board rescinded its action and adopted a new waiver.

In June 2006, the board adopted a new agricultural waiver. Currently the board is developing a monitoring and reporting program for farm and ranch groups under this new waiver program which waives pollution discharge requirements for farmers and ranchers.

14. *What information does the board hope to develop from the irrigated lands conditional waiver monitoring and reporting program?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814

Thank you for your assistance.

Sincerely,

DON PERATA

DP:KW

Response to Senate Rules Committee Questions from Cheryl Maki

Statement of Goals

1. My major goal is to help improve the water quality of our beautiful State. I hope to accomplish this by working in concert with my colleagues and the staff of the Regional Water Quality Board, to get the work done efficiently and fairly. I sincerely hope that I can bring a balanced approach to the board. I will measure my success by the work accomplished and how those tasks are completed.

2. There are several serious problems facing the board, but two of the largest are salinity and small WWTP in non-compliance. Salinity in the delta is a huge problem and threat to the water supply. We also have hundreds of small communities with aging infrastructure and sewer systems that discharge into our surface waters and land but cannot comply with water quality standards. Unfortunately, these communities often don't have the funds to improve these systems. This is a serious risk to the health and safety of the waters of our State.

State and Regional Board Roles

3. The Regional board staff, from the Executive Director Pamela Creedon to the Chief counsel Philip Wyels, have been extremely supportive in helping me understand the complex issues in our region. I have had several one on one meetings with them and other staff members to educate and enlighten me on the complicated issues that have come before the board in the last several months. We are updated by email daily with ongoing items from the executive director, the assistant executive officer and other staff members. I also never hesitate to ask my colleagues on the board questions. We have several board members who are very well versed in water issues past and present. It might be helpful if the State Board gave a one or two day conference for all regional board members once a year, where we could attend classes and learn about the issues affecting our State and how they are being handled in other regions.

4. Philip Wyels chief counsel for the board met with me (4 hours) before the first board meeting I attended and gave me an overview of the various legal issues that might be involved with my seat on the board. He also gave me a copy of the Government code that covers conflicts of interest and I have read it. I also served on the Auburn City Council for 8 years, so I feel like I am fairly well versed in conflict of interest requirements. If I have any doubt of a potential conflict I will refrain from voting until I consult counsel. So far I have not had to recuse myself on any items on the agenda.

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Response to Senate Rules Committee Questions from Cheryl Maki

5. I am still new to the board so I have had very little time to recognize the dynamics between the State board and the regional board. I did meet Tam Dudoc at the strategic planning meeting we had one afternoon. I have also met Charles Hoppin who attends our meetings. So, I do feel that the state board is connected to what is happening at our regional board meetings merely by their interest in attending our meetings and being involved. I would not have enough information to comment on coordination and accountability other than what I have mentioned above.

6. In my limited time on the board it certainly seems that staff is making a very good effort to get items to us that need to be enforced. They always provide me with plenty of information to help me make a decision. However, staff is very pushed to get these items to us in a timely manner due to under staffing. I am not sure if this is a budget problem or the lack of qualified labor. With all the demands put on staff to provide us with the information we need in a timely manner, it could be why there is a problem hiring people. It is sometimes hard to find good help who can work well in a pressure filled environment, for the wages that are being offered. In other words, yes, I do believe there are items that get less attention due to current funding levels.

Cleaning up Polluted Waters

7. As I understand it, our regional board has developed a (dynamic) list of impaired waterways. There is staff that is hired just for TMDL monitoring and data collecting. Our board has worked with the State board and other interested groups such as watershed groups, to develop this list. Resources have been directed toward the most polluted or impacted waterways in this group. TMDL's have been identified for selenium, diazin, mercury, sulphur and several other pollutants that require various degrees of oversight. The board has added these and other pollutants to the basin plans so it can monitor and enforce the use of these pollutants I'm not sure any region has adequate resources to develop and implement the required TMDL's. Developing and adopting TMDL's is an ongoing issue in all regions.

8. The board will enforce and monitor TMDL's as they are brought to their attention during any permit renewal process and enforcement proceedings.

Enforcement of Water Quality Laws

9. Stiff fines, revocation of permits, stop work orders and anything else that will make the violator realize the severity of their actions in polluting the waterways.

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Response to Senate Rules Committee Questions from Cheryl Maki

10. As I stated above, I believe fines and penalties are necessary when it comes to protecting our waterways. The only time that a fine or penalty might not be appropriate is when a "real" accident has occurred and the discharger is doing everything to clean up the illegal discharge. I also believe when small districts are making a strong effort to comply with regulations some latitude should be given. Of course these decisions need to be made on a case by case basis.

Salinity Management in the Central Valley

11. As I stated above I already know that salinity is a pressing issue and we need to deal with it now. In the few months I have spent on the board I have noticed that we are already addressing salinity when we review NPDES permits for various types of surface discharges. I certainly hope we can act in a timely manner. Instead of waiting for a salinity management plan, we need to address each industrial discharger, agricultural user, dairies on a case by case basis, while continuing our user group discussions and planning.

Union Pacific's Trestle Fire

12. After the initial fire flows into the river, our staff arrived on the scene and starting then all flows were contained on land as the result of protective berms being placed in a main drainage ditch and in other locations. We had staff on sight from the first day until clean up was complete. The report I received stated that the American river did not have any detectable impact of the fire suppressant. The quality of the fire fighting water was in excess of several water quality objectives. Soil samples show several PAHs, (products of creosote treated burning of wood) levels slightly in access of industrial PRGs and USEPA screening levels for soils for industrial uses.

13. The board staff provided oversight on clean up and did a sampling work plan. I believe this was provided to the fire departments that were on scene. UP plans to clean the site prior to the rainy season. The impact on water quality was greatly reduced because of the prompt involvement of the board staff on site. I believe there should be an ongoing dialogue between the board and all fire agencies on the critical need to protect the waterways when there is a fire.

Agricultural Waiver

14. The most important information gathered from the irrigated lands conditional waiver and monitoring program would be the types of pesticides and pollutants that most dominate our waterways from irrigation of all types. This would help us develop and implement a plan to dilute, reduce or eliminate the most dangerous and prevalent of these pollutants.

CALIFORNIA LEGISLATURE

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SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

June 22, 2007

Sandra O. Meraz

Dear Ms. Meraz:

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the Central Valley Regional Water Quality Control Board on Wednesday, July 18, 2007. At this time you are not required to appear, but if we receive formal opposition to your appointment, you will be asked to appear before the committee.

Following are questions we would like you to address in writing prior to the hearing. Please respond by July 9th so committee members will have sufficient time to review the material before your hearing.

Statement of Goals

1. *What are your goals and objectives as a member of the Central Valley Regional Water Quality Control Board? What do you hope to accomplish during your term? How will you measure your success?*

2. *What do you believe are the most serious problems facing your regional board?*

State and Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, particularly considering these are part-time positions.

3. *Do the state board and your regional board staff assist you to better understand some of the complex issues before you if you request help? If not, where do you seek help when you need it? Do you have any suggestions on how the state water board's staff might better assist you?*

4. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop Total Maximum Daily Loads (TMDLs), and enforce permit and discharge requirements as well as state and federal water quality laws. However, regional board budgets are not reviewed individually by the Governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided through the state board appeals process instead of through a consistent statewide policy that is proactively established by the state board and implemented by the regional boards.

5. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?*

6. *How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?*

Cleaning Up Polluted Waters

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal storm water permit programs and Total Maximum Daily Load (TMDL) programs, which are required under the Federal Clean Water Act to improve water quality by limiting the amount of pollutants allowed into water bodies.

Currently, regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

7. *Please describe the status of your board's TMDL process. Does your board have adequate resources to develop and implement the required TMDLs?*

8. *How will the board monitor and enforce the TMDLs it has or will adopt?*

Enforcement of Water Quality Laws

Two years ago the office of the secretary of Cal-EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards were among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never sought criminal penalties for serious violations, and generally did not aggressively pursue violators.

9. *What enforcement options do you believe provides the most effective tools for violations of board orders?*

10. *What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?*

Salinity Management in the Central Valley

One of the most pressing problems in the central valley is the buildup of salt in both surface water and groundwater. While some salts occur naturally, others are discharged into water as a result of food processing—everything from tomatoes to cheese, fertilizer application, and wastewater treatment. In high concentrations, salt can kill crops and cause deformities in animals, among other problems. The central valley regional board is beginning to develop a salinity management plan that will take several years to finalize.

11. *How will you determine the severity and scope of this problem? Can you act in a timely manner to address the problem? What approaches will the board use? Please explain.*

Union Pacific's Trestle Fire

On March 15, 2007, the trestle supporting the Union Pacific Railroad's southern approach to the American River Bridge in Sacramento caught fire. Board staff expressed concerns regarding the firefighting water runoff to adjacent surface water drainages, wetlands, and the American River. Regional board staff is scheduled to meet with Union Pacific representatives to discuss the scope of the investigations.

12. *What are the preliminary findings on the impact to water quality of Union Pacific's trestle fire? What types of further investigations need to be conducted to determine the extent of water quality damage? What was done immediately to determine water quality?*

13. *Board staff began to discuss the potential effects of the fire suppression activities on water quality with Union Pacific and firefighters on March 16, 2007, the day the fire restarted when the fire damaged trestle was knocked down. What, if any, is the board's role in discussing with the various fire departments in the region strategies to minimize water quality impacts caused by firefighting activities?*

Agricultural Waiver

In 2002 and 2003 there was controversy over how the board dealt with the agricultural waiver, or irrigated lands conditional waiver program. On June 2, 2003, the attorney general's office opined that, because there was concern that the waiver proceedings had been irreparably tainted by a potential or actual conflict of interest, it was recommended that the State Water Resources Control Board remove the issue from the Central Valley Regional Water Quality Control Board and place it under the state board's jurisdiction. Eventually the regional board rescinded its action and adopted a new waiver.

In June 2006, the board adopted a new agricultural waiver. Currently the board is developing a monitoring and reporting program for farm and ranch groups under this new waiver program which waives pollution discharge requirements for farmers and ranchers.

14. *What information does the board hope to develop from the irrigated lands conditional waiver monitoring and reporting program?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814

Thank you for your assistance.

Sincerely,

DON PERATA

DP:KW

July 9, 2007
Appointment Unit
Senate Rules Committee
State Capitol, Room 420
Sacramento. Ca, 95814

Following are the responses to questions 1-14.

1.
a. To bring together a relationship of understanding, recognition, and knowledge of the need to protect the waters of the Southern San Joaquin Valley, to the Regional board.

b. To control the contamination of the waters, that has a huge impact on the residents, and schools, to be able to alleviate the cost to the people, in a positive way.

c. When I see in the future more compliance, then non-compliance with contamination by tributary run offs.

2.
a. I have attended three meetings; it isn't possible for me to recognize serious problems, other then the pressure of receiving revisions during meetings, with no time to read them, and making a good decision.

3.
a. The State Board Consultant was good about reaching out, and offering the assistance, but at this time I don't know who, what, and when to ask, and what are the subjects one can ask for assistance.

b. I ask the Ex Director, she asked staff to help me.

c. Yes, Training, and orientation of how the State and the Regional Board work together.

4.
a. I received training from one of the regional board Attorneys.

b. I know to remove myself if I have affiliations with said intended.

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c. At this time I have not had the need to remove myself.

5.
a. It is too early for me to have an opinion, on this series of questions.

6.
a. This question is an example of the lack of knowledge one has. I have not discussed funding with anyone.

b. Yes I believe that there are some issues that get less attention due to resources, if that means money then yes there is a big issue.

7.
a. Summary of TMDL Status Included.

8. a. Implementing NPDES, Storm water Permits, Ag Conditional Waivers, all of these create an additional, and significant work load.

9.
a. Letters of violation, Monetary Liabilities for failure to meet scheduled dates, Referral to the Attorney General for injunctions, Cease and Desist orders for non-compliance,

11.
a. To define the salt problem, and its impact not only on the drinking water supplies, crops, but for all other uses within the central valley.

b. The impacts of salt are increasing. The Board has made salinity a priority issue, and anticipates developing and implementing a new salinity policy within a reasonable time frame.

c. The board will use existing policy and regulations to control salt discharges, at the same time develop the Salinity policy through the Basin Planning process. Management practices and/or treatment and disposal systems will require efforts by many stakeholders.

Questions: I needed help with 12, and 13.

Summary of Central Valley Regional Board TMDLs – June 2007

TMDLs Adopted between 2000 and June 2006

Grasslands Selenium - Completed in June 2000

Salt Slough Selenium - Completed June 2000

San Joaquin River Selenium - Completed June 2001

Sacramento River Copper, Zinc and Cadmium - Completed April 2002

Clear Lake Mercury - Adopted December 2002

Sacramento and Feather River Diazinon - Adopted October 2003

San Joaquin River Salinity and Boron - Adopted September 2004

Sacramento Urban Creek Diazinon and Chlorpyrifos - Approved June 2004

San Joaquin River Dissolved Oxygen - Adopted January 2005

Cache Creek Mercury – Adopted October 2005

San Joaquin River Diazinon and Chlorpyrifos – Adopted October 2005

Delta Diazinon and Chlorpyrifos – Adopted June 2006

Clear Lake Nutrients – Adopted June 2006

Sulphur Creek Mercury – Adopted March 2007

Delta Mercury – Scheduled for December 2006 – Delayed to October 2007

San Joaquin River Salinity and Boron Upstream of Vernalis – Scheduled for October 2008

American River and Sacramento River Mercury - Scheduled for June 2008

Old and Middle River Dissolved Oxygen – Scheduled for December 2009

Stockton Area Sloughs Pathogens – Scheduled for December 2007

Stockton Area Sloughs Dissolved Oxygen – Scheduled for March 2009

Stockton Area Sloughs Diazinon and Chlorpyrifos – Adopted June 2006

Central Valley Organochlorine Pesticides – Tentatively Scheduled for June 2007

Question: ***What are the preliminary findings on the impact to water quality of the Union Pacific's Trestle Fire?***

12.A During the initial fire fighting efforts on March 15th, fire fighting water and fire debris ran into the American River. River water samples, taken the morning of March 16 had no detectable residuals. Based upon samples of the fire-fighting water accumulated on site, the water was contaminated but the dilution afforded by the flows of the American River likely rendered the water non-harmful to downstream users and biota. The Department of Fish and Game agreed with this assessment.

B Fire fighting water accumulated and soaked into the ground around the fire, particularly in the drainage ditch adjacent to the trestle, likely causing groundwater pollution. The degree to which the groundwater is contaminated is unknown at this time. Union Pacific is preparing a sampling plan to further assess any impacts on groundwater.

A Union Pacific has acted quickly to remove all ash, debris and impacted soil in the immediate vicinity of the trestle thus preventing further surface water quality impacts and continuing groundwater impacts.

B **Question:** ***What types of further investigations need to be conducted to determine the extent of water quality damage?***

Plans are currently being developed by Union Pacific to sample the groundwater beneath the drainage ditch where most of the fire fighting water accumulated and soaked into the ground. In addition additional sampling of surface water and sediments in onsite drainages is needed to confirm that there are no continuing impacts on water quality or aquatic life.

C **Question:** ***What was done immediately to determine water quality?***

On March 16th, American River water samples, soil and debris samples, and fire fighting water samples from onsite drainages were collected by Regional Water Quality Control Board staff and sent to the Board's analytical laboratory for analysis on an expedited basis.

13. **Question:** ***[When the fire restarted on March 16] What was the board's role in discussing with the various fire departments in the region strategies to minimize water quality impacts caused by firefighting activities?***

Antonia Vorster, the Supervisor in charge of the Regional Board's Site and Groundwater Cleanup Section, and several members of her staff, were onsite at the time and engaged in direct discussions with Union Pacific and Fire

Department personnel. A number of agencies were directly involved including Fish and Game, Toxic Substances Control, Air Board, County Hazmat and the US EPA. When it was decided to attempt to extinguish the fire and that foaming agents would be used, a joint plan was developed to contain the fire fighting water on site and, to the extent possible under the circumstances, prevent it from entering the American River.

As with any major event such as the trestle fire, lessons are learned that can help with the next response. The Regional Water Board and other CalEPA agencies will be meeting in the near future with the state Fire Marshals to review the fire and discuss possible improved coordination and emergency response procedures for dealing with large fires.

14.
a. First identify the types of sources and pollutants that are impacting water Quality. Monitoring will be directed at evaluating specific management practices to identify methods of farming that can minimize or eliminate discharges of those pollutants. Finally there will be long – term monitoring to evaluate progress in eliminating water quality impairments.

Respectfully

Sandra O, Meraz

Sandra O, Meraz

Jack L. Clarke

July 9, 2007

Nettie Sabelhaus
Rules Committee Appointments Director
Room 420, State Capitol
Sacramento, CA 95814.

Dear Ms. Sabelhaus,

The following paragraphs are in response to Chairman Don Perata's letter of June 22, 2007 pertaining to the Senate Rules Committee review of my nomination by the Governor to serve as a representative of water supply on the Lahontan Regional Water Quality Control Board (Water Board). It has been my honor to serve on the Board since 1996.

My response to the questions posed are as follows:

Statement of Goals

1. **What are your goals and objectives as a member of the Lahontan Regional Water Quality Control Board? What do you hope to accomplish during your next term? How will you measure your success?**

As a member of the Lahontan Board I will do my part to see that we implement and enforce water quality laws in a consistent, fair and logical manner to ensure the protection and restoration of the quality of the states waters.

Specifically, I will hope to target the following issues:

Ensure that stormwater disposal does not damage the drinking water aquifers that the rapidly developing southern portion of our region relies on for drinking water supply. During the next four years I expect that the Water Board will adopt and implement a regulatory program that: tracks the location of drywells; requires the characterization of stormwater being discharged to drywells; if necessary, requires the treatment of stormwater prior to discharge to dry-wells; and requires maintenance and monitoring of these facilities.

Ensure that the rapidly developing communities in the southern portion of the region move quickly to expand treatment capacity to minimize the current effects on groundwater quality. During the next year I expect that the Water Board will adopt compliance schedules requiring responsible entities to construct the necessary facilities

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in the shortest reasonable time. I would require Water Board staff to report progress on a quarterly basis along with an analysis of how growth expectations compares with current treatment and disposal capacity.

Ensure that the clarity of Lake Tahoe is protected. During the next four years I expect that the Water Board will adopt the Lake Tahoe TMDL which will include pollutant reduction targets. Additionally, the TMDL should include a strategy to periodically adjust the targets in response to comparisons between actual changes in Lake clarity with that predicted by models used to develop the targets.

2. What have been your most significant accomplishments as a member of the Lahontan Regional Water Quality Control Board?

A Board member cannot individually take credit for Board accomplishments. However, I believe that I have used my position on the Board to direct and support staff efforts in areas which needed more Water Board oversight and action. These efforts have resulted in discharger-specific and broad region-wide decisions that have and will continue to make a difference in protecting and improving water quality. Being in the water supply business, I have first-hand experience being regulated by a State agency (in my case – the Public Utilities Commission) and I use this background to shape Board decisions balance water quality protection with the legitimate needs of the regulated community. During my tenure on the Water Board I have had significant input in the following accomplishments:

a. Forced Los Angeles County Sanitation Districts to begin the process to upgrade and expand its treatment capacity that serves the communities of Lancaster and Palmdale. These Districts had neglected this area and failed to initiate the requisite planning and rate structure increases needed to implement facilities in response to the rapid growth in the area. I was the chair of a Water Board subcommittee that held quarterly meetings in the Antelope Valley. At these meetings we required the Districts to appear and describe their efforts to address this problem. As a result of this frequent and public oversight, the Districts have completed the planning process and are implementing the necessary facilities.

b. Directed major mining operations to discontinue use of problematic disposal units and to upgrade existing treatment and disposal practices. The Lahontan region is the home to many large and unique mining operations. Molycorp and Searles Valley Minerals are two operations that have historically relied on treatment and disposal practices that were not totally protective of water quality. In response to Water Board oversight and directives, these companies have implemented wastewater treatment improvements and have ceased use of and are properly closing disposal sites that do not meet current standards. These companies are still in business, providing essential and unique raw materials for many industrial uses and providing jobs for citizens living in the eastern portion of our State.

c. Established numerous general permits and waivers that streamline the permitting process for dischargers thereby allowing limited Water Board resources to focus on higher priority efforts. These actions include: a general permit for small construction projects in sensitive watersheds; a general permit for large construction projects in the Lake Tahoe watershed which takes the place of the Statewide construction permit and includes Tahoe-specific requirements; a waiver for timber harvest activities that includes provisions eliminating the need for the filing of any paper-work for defensible-space measures; and a waiver for grazing activities in the Walker River watershed addressing the primary non-point source contributing to water quality impairment.

3. What do you believe are the most serious problems facing your regional board?

- Addressing statutory mandates, public expectations and discharger requests within the resource allocations provided.
- Addressing groundwater contamination issues in basins that are in overdraft since the most common remediation technique (pump and treat) could exacerbate this situation.
- Establishing a logical and transparent implementation plan for reversing the loss of clarity in Lake Tahoe.
- Developing policies addressing discharges to, remediation of, and conjunctive use groundwater aquifers in the southern portion of the region.
- Maintaining an effective enforcement program that addresses significant violations and sends the appropriate deterrent message given the other demands on the resources provided.

State and Regional Board Roles

4. Do the state board and your regional board staff assist you to better understand some of the complex issues before you if you request help? If not, where do you seek help when you need it? Do you have any suggestions on how the state water board's staff might better assist you?

Yes. I believe regional board staff does an outstanding job of describing technical issues in lay terms and in analyzing how both State and Regional Water Board policies can be used in shaping our decisions.

5. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?

The Water Quality Coordinating Committee meetings always include training on this issue. These discussions are very informative in that practical examples are described and members hear the same message. I also take advantage of the opportunity to discuss possible issues with our Board counsel. I have not had to withdraw from participating in a decision of the Board.

6. What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?

The laws establishing the State and Regional Water Board structure lay out the framework for this relationship. Water quality decisions are to be made at the regional level within the bounds established by both regional and state policies. Where there is the need for consistency on a statewide basis, it is the role and responsibility of the State Water Board to set policy. Unfortunately, many Regional Water Boards have been tasked with making decisions on projects without the benefit of statewide policy, which can lead to inconsistency. There clearly are areas where additional statewide policy is needed and I am aware that the State Water Board is working to fulfill its obligation. However, we have a very diverse state and some issues cannot and should not be addressed at that level.

I believe that the State Water Board could do more to facilitate coordination between regional water boards in developing technical expertise and policy interpretation. Obviously, this effort would involve resources at both the State and Regional Water Boards that would either have to be supplemented or could be redirected resulting in further erosion of our ability to implement other programs.

Accountability includes both the number of actions and the nature of the actions. The State Water Board is working to develop essential data base systems that will allow Regional Water Board and State Water Board staff to track issues (permit action deadlines, compliance schedules and violations) which will make it easier to prioritize resources. Accountability must factor in available resources as it is not possible to accomplish everything that should be done. The State Water Board appears to rely on petitions to address the substantive aspect of accountability. Again, there is room for improvement in this area, but it involves resources.

7. How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?

Many of my responses to prior questions have mentioned resources. The Lahontan Water Board is constantly evaluating priorities, both in deciding whether to initiate new activities and whether to forcefully pursue enforcement rather than seek settlements as major contentious actions are very resource intensive.

We strive to use the best available science in reaching our decisions. One critical component is statistically reliable information on the quality of our waters. Non-point source pollution is the most significant source of discharges to most of our surface waters. However, since these discharges are very weather dependent and weather is extreamly variable, we do not have much information to document the relationships between such discharges and water quality problems. Recent development of bioassessment monitoring techniques and protocols will assist in addressing this void but regionwide implementation is not currently a funded activity.

The Water Board's enforcement program has been the subject of criticism. It is currently not a stand-alone program (other than a very small resource allocation). If we increase our enforcement efforts it is at the expense of updating old permits and monitoring the compliance efforts of existing dischargers. Also, when dischargers request new permits or amendments to existing permits, there are statutory deadlines that must be followed limiting the Water Board's discretion in addressing non-mandated but important work.

Cleaning Up Polluted Waters

8. Please describe the status of your board's TMDL process. Does your board have adequate resources to develop and implement the required TMDLs?

Let me start by stating that reducing the number of impaired water bodies (the focus of the TMDL program) is a very high priority of this Water Board. The Lake Tahoe TMDL is our highest priority TMDL and, due to the complexity and policy implications of the implementation plan, we are devoting almost half of our TMDL resources to this effort.

However, our TMDL program has been a challenge due to the limited information used to list many water bodies as impaired (see response to question no. 7). Much of our TMDL effort has been to do additional analysis to either document the impairment and its cause or to support a delisting (removing the water body from the list needing formal TMDLs) because the impairment really did not exist. Additionally, further evaluation has revealed that some beneficial uses were inappropriately designated thereby leading to an unsupported conclusion of impairment. The Water Board has removed a number of water bodies from the TMDL list through appropriate changes in beneficial use designations. Additionally, we are pursuing other means to address impairments rather than through development and adoption of TMDLs. The grazing waiver described in my response to question no. 2 is an example of establishing a regulatory program to address discharges causing the impairment rather than initially developing a TMDL.

A direct response to the question includes an assumption of timing. We do not have the resources to adopt all required TMDLs if the goal is to complete the effort in five years. However, if the goal is to complete this effort over a longer time frame and our other regulatory efforts to address impairments are also recognized, then we may have adequate resources.

9. How will the board monitor and enforce the TMDLs it has or will adopt?

Implementation of TMDLs is almost always through adoption of permits or waivers. We require our staff to provide quarterly status reports on actions to implement the TMDLs. For the Squaw Creek TMDL, our Executive Officer recently designated Placer County as a municipality subject to the Phase II State-wide stormwater permit as a vehicle to control runoff from areas within its jurisdiction. Once implementation actions are incorporated into permit conditions, the data base system described in my response to question no. 6 will be the tool to track compliance.

Ambient water quality monitoring is an essential component to track whether regulatory actions are having the expected effect to address the impairment. Again, using the Squaw Creek TMDL as an example, the Water Board staff is working with all dischargers in the watershed to establish a monitoring program that can provide data to evaluate the effectiveness of the regulatory actions. The monitoring program would be imposed as a permit condition (some monitoring is already required in existing permits) and it is anticipated that the cost to implement the program would be shared by the various dischargers.

Enforcement of Water Quality Laws

10. What enforcement options do you believe provides the most effective tools for violations of board orders?

A permitting program without an enforcement component is virtually worthless. Dischargers must know that flagrant or significant violations will have consequences. While I believe our enforcement program can and should be improved, any strategies towards that goal must address how this effort will impact other Water Board programs if there is not an increase in staff resources to support the strategies.

The Water Board has many enforcement tools available to it depending on the nature of the violation. The enforcement response must be commensurate with the violation, must ensure that compliance is achieved in the shortest reasonable time and must have a deterrent value. While the Water Board can seek judicial enforcement to address violations, I support using our administrative enforcement remedies in all but the most egregious situations because administrative remedies can be implemented quicker and are less resource intensive. Furthermore, the Water Board retains control of the outcome rather than rely on a court to adjudicate complex technical issues.

11. What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?

Many Water Code violations are relatively minor and do not warrant the imposition of penalties. However, significant violations do warrant consideration of penalties to both deter others and to recover any economic benefit gained as a result of the violation. Given the varied nature of the violations we see, it is virtually impossible to develop

specific criteria defining when fines should or should not be used. Historically, our Water Board reviewed all violations on a quarterly basis and provided direction to our executive officer if we felt that violations warranted consideration of a significant enforcement action and one was not forthcoming. We will continue this practice once the data base system described in my response to question no. 6 is fully functional.

Lake Tahoe

12. Who will assist you in determining what water quality impacts are expected from the build out of the proposed piers, boat slips, and buoys? How will you determine if the impacts can be mitigated?

The analysis of water quality impacts and appropriate mitigation measures is normally developed through the CEQA process. In this situation, the Tahoe Regional Planning Agency (TRPA) is developing this analysis through its comprehensive planning process (very similar to that of a lead agency). Water Board staff are involved in this process and have provided formal comments on deficiencies in the current analysis. If TRPA fails to complete this analysis or fails to develop a plan that incorporates adequate mitigation measures and monitoring to ensure that the measures are implemented and are effective, the Water Board will be tasked with this responsibility for areas within its jurisdiction prior to being able to issue any permits allowing these facilities to be constructed.

13. Does the Lahontan board have plans for restoring the clarity of Lake Tahoe? Specifically, are nitrogen, phosphorus, and fine sediment loading being addressed?

The development of the Lake Tahoe TMDL is a joint project between the Water Board and the Nevada Division of Environmental Protection (NDEP). There are many other stakeholders involved in this process including both federal agencies and academic institutions. These efforts include extensive modeling and analysis of the effectiveness of the many implementation strategies. It is anticipated that the results of this effort will be incorporated into the TRPA regional plan update and USFS Forest Plan update thereby allowing the Water Board to accept these plans as its TMDL implementation plan. If this does not occur, the Water Board will be required to develop a separate implementation plan for the TMDL.

Currently the Water Board is regulating those activities within its authority in an effort to control nutrient and sediment loading to the extent feasible from new projects and requiring existing projects to install best management practices to reduce pollutant loading. While these efforts do result in pollutant loading reductions, they may not be the most effective and cost-efficient means to achieve the pollutant load reduction needed to meet the clarity standard.

Nitrate Contamination

14. How is the Lahontan board responding to the delays in the construction of the required tertiary sewage treatment plants? Has your board required the nitrate contaminated groundwater be cleaned up?

The Water Board is currently evaluating the status of construction of these facilities as part of an on-going adjudicatory procedure. The hearings on this issue are still pending so it would not be appropriate for me to comment on the evidence at this time. However, as described in my response to question no. 2, I believe that the Water Board actions prompted the Districts to complete the planning process and initiate construction. As part of the on-going adjudicatory process, the Water Board is evaluating the current construction time-lines to determine if there were delays and, if so, were they beyond the control of the Districts.

The Water Board has required the District to initiate actions to reduce the level of nitrate in groundwater to below the drinking water standard of 10 mg/L. Actions to comply with this requirement have been implemented and the Water Board is monitoring progress on a regular basis. The Water Board is very concerned about the consumptive use of groundwater as part of this cleanup effort and has required the District to consider cleanup options that do not result in a consumptive use of groundwater. Once these options are presented and evaluated, I expect the Water Board to set a final cleanup standard.

There are no changes to my Form 700. It would be an honor to be reconfirmed so that I could continue working on the many important issues underway for a quality solution to protect the environment and the water of the State of California.

My appointment is very important to me, not only because of my career in water supply, but also for environmental concerns. I would like to see water quality and supply preserved for future generations.

Sincerely,

Jack Clarke
Lahontan Water Board Vice-Chair

Amy L Horne

July 3, 2007

Nettie Sabelhaus
Rules Committee Appointments Director
Room 420, State Capitol
Sacramento, CA 95814.

Dear Ms. Sabelhaus,

I want to thank the Senate Rules Committee for considering whether to confirm my reappointment to the Lahontan Regional Water Quality Board. If confirmed, I would be honored to serve another term.

Since I was appointed to the Board in 2003, I have enjoyed helping to protect the water quality of the Lahontan region. This is important work because the Lahontan region supplies Californians with the purest waters available. This region is blessed with some of California's (indeed the nation's) best-loved waters – namely Lake Tahoe and Mono Lake. It is also home to some of the most notorious stories in western water lore, from the export of Owens Valley water to chromium-six pollution in Hinkley.

My responses to your questions are as follows:

Statement of Goals

1. *What are your goals and objectives as a member of the Lahontan Regional Water Quality Control Board? What do you hope to accomplish during your next term? How will you measure your success?*

My goals as a member of the Lahanton Board are to protect water quality and to serve as a model of governance. If I am confirmed for a second term on the Lahontan Board, I hope to make progress in four areas:

- Establish a Board Culture of Excellence in Decision-Making: I would measure success by the number of Board members, their technical and legal expertise, their professional conduct, and their engagement in State and Regional Board efforts to set appropriate policies.

- Reduce Loading of Nutrients and Particles in Lake Tahoe. I would measure success by whether the Board has adopted the Lake Tahoe TMDL and begun implementation. This would include whether the Board has enough funding to implement the TMDL and has allocated load reductions among the various sources

- Protect Aquifers for Long-Term Water Storage: I would measure success by whether the Board has adopted Basin Plan amendments that set sub-basin water quality objectives for nitrate and total dissolved solids (TDS), as well as clear policies regarding the use of groundwater assimilative capacity.

- Maintain the High Quality of Sierra Rivers and Streams: I would measure success from the following indicators: trends in bioassessment monitoring data, whether small municipalities are in compliance with their storm water permits, whether the timber waiver effectively protects water quality while allowing fire districts to reduce fuel loads and whether grazing waivers are in place for all surface waters impaired by coliform.

2. *What have been your most significant accomplishments as a member of the Lahontan Regional Water Quality Control Board?*

My most significant accomplishments on the Lahontan Board have been to:

- Set a Board Culture of Civil Discourse: The public is in an angry mood toward government. Just last week, after the Angora Fire, TRPA's director John Singlaub was booed off stage and required police escort to leave a meeting with South Lake Tahoe residents. When I first came on the Board, our meetings were frequently disrupted by angry outbursts and contemptuous behavior.

  When I became Chairman of the Lahontan Board, I adopted procedures to create a civil climate and such disruptive behavior is now rare. I pay attention to the details of each public meeting so that all attendees know what to expect. This starts with posting the agenda and keeping on schedule. It includes stating and enforcing clear ground rules. I prepare opening statements for each agenda item explaining what it is, focusing attention on the issue before the Board, and indicating whether the Board will make a decision. Because of this, the public is less frustrated; it understands better what the Board is doing and why. For example, last summer the Lahontan Board held several hearings to decide the liability for the sewage spill in Lake Tahoe caused when a pier contractor punctured a sewer main. Although emotions ran high, the Board was able to conduct its proceedings in a civil atmosphere.

- Establish a Timber Waiver that Protects Water Quality And Allows Residents to Reduce Fuel Loads: In February 2007, the Lahontan Board adopted a Timber Waiver that streamlines the permit process for reducing forest fuels. No permit is required to create defensible space within 150 feet of an existing structure. The highest scrutiny is reserved for those projects that pose the greatest risk to water quality, namely large projects on steep slopes or in stream environment zones. The Board has obtained and awarded grants to help homeowners defray the cost of creating defensible space. It has also sought funding for scientific research that identifies better ways to protect water quality when cutting trees.

- Squaw Valley: When I first came on the Lahontan Board, Squaw Valley was a major concern. The Board was involved in contentious litigation with Squaw Valley Ski Corporation and was developing a Squaw Valley TMDL. I was able to help resolve both of these issues. I was appointed to a Board subcommittee that oversaw the litigation, which led to a settlement that required Ski Corporation to pay a $1 million fine. When the Lahontan Board adopted the Squaw Valley TMDL, I pointed out that the monitoring plan would not provide statistically significant data. As a result, the staff is revising that monitoring plan.

3. *What do you believe are the most serious problems facing your regional board?*

- Effectively implementing state and federal clean water laws given crippling funding constraints.
- Protecting the high quality of surface and ground water in rapidly urbanizing watersheds.
- Reversing the decline in Lake Tahoe clarity .
- Timely prosecution of violations given the legal requirement to separate staff functions between advising the Board and prosecuting the case.
- Identifying competent people who are willing and able to serve on the Lahontan Board. Even in this rural part of California, it is virtually impossible to find a county supervisor or city council member who is not disqualified by the 10% NPDES rule.

State and Regional Board Roles

4. *Do the state board and your regional board staff assist you to better understand some of the complex issues before you if you request help? If not, where do you seek help when you need it? Do you have any suggestions on how the state water board's staff might better assist you?*

Yes. State and regional board staff are always responsive and helpful. I am impressed with the excellent quality and integrity of both state and regional board staff.

5. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

Most of the training I have received as a Regional Board member has addressed this issue. The semi-annual Water Quality Coordinating Committee meetings always include a session with the Chief Counsel of the State Water Board in which he discusses this issue. So far, I have never had to withdraw from voting on an issue before the Board. If I have the slightest question of conflict, I always discuss it with the staff counsel.

6. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?*

In my view, the State Water Board should build a basic policy framework from which regional boards can tailor appropriate action, while regional boards should be committed to minimizing inappropriate inconsistencies. Statewide policies should be set in consultation with regional boards so that they accommodate the considerable diversity watersheds and socio-economic conditions found in California. Through the current effort to update the Strategic Plan, the State and Regional Boards are working hard to address these issues procedurally.

While it is true that in past major policy decisions were made through the state board appeals process, this is less true today. The new State Board Chairman Tam Doduc is putting in place policies regarding water recycling, groundwater recharge and storm water management, which will be extremely helpful to regional boards. In the past, regional boards struggled to comply with their mandates without effective guidance from the state. Having more resources and systems in place will help regional boards to minimize inappropriate inconsistencies more effectively.

7. *How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?*

An analysis conducted seven years ago found that regional boards have only one-fourth of the resources they need to meet requirements mandated by state and federal law. Faced with such severe constraints, the Lahontan Board sets priorities strategically. For example, because it doesn't have the resources to bring enforcement actions against every violator, it constantly evaluates the nature of the violations, what environmental threat they pose and whether the discharge is chronic. It then addresses as many high priority cases as resources allow. Although every program is stretched to the breaking point, the Regional Board strives to be professional, effective and responsive to the public.

The greatest threat to surface waters in the Lahontan Region, because of its rural character, is non-point source pollution. Monitoring is critical to know the condition and trends in water quality, yet inconsistent funding makes it impossible to develop legally and scientifically defensible baseline datasets that would support enforcement actions. This is an area I would like to see receive more attention and resources.

Cleaning Up Polluted Waters

8. *Please describe the status of your board's TMDL process. Does your board have adequate resources to develop and implement the required TMDLs?*

The Lahontan Water Board is committed to implementing its required TMDLs and is pushing to develop them as quickly as resources allow. To date, the Board has adopted TMDLs for Heavenly Valley Creek, Indian Creek Reservoir, and Squaw Creek. It is actively developing five more TMDLs: Lake Tahoe, Blackwood Creek, Truckee River, Bronco Creek, and Gray Creek. Not surprisingly, the Lake Tahoe TMDL is significantly more complicated, technically and legally, than all the rest and consumes over half of the Board's TMDL resources.

The Board has made further progress on the TMDL program by finding that 30 water bodies could be removed from the 303(d) list and therefore are not candidates for the TMDL program. Some of these waters have been restored and are no longer impaired. Others were originally listed based on limited data and further scientific studies revealed that the impairments were caused naturally (for example, by geology), or the water was not impaired after all.

Lahontan lacks the resources it needs to quickly develop TMDL programs for all its impaired waters. Faced with this constraint, the Regional Board is focusing its efforts on the highest priorities: namely, Lake Tahoe, the Truckee River, and their tributaries. Implementing a TMDL is extremely resource-intensive because non-point source pollution is the predominant cause of impairment. The most effective approach to addressing these problems is to conduct extensive campaigns to educate all who discharge within the affected watershed, while also adopting new permits, revising existing permits, and issuing enforcement orders. Implementing the Lake Tahoe TMDL alone will take more resources than the Region currently has.

Because the TMDL process is so resource-intensive, the Lahontan Board is taking a multi-pronged approach to address those waters remaining on the 303(d) list. It will focus its limited TMDL resources on those waters where the program is most appropriate. If the Board finds ways to improve water quality and remove impaired waters from the 303(d) list more quickly and at less cost to taxpayers, it will do so. This may include a combination of permits, waivers, restoration projects and scientific research.

9. *How will the board monitor and enforce the TMDLs it has or will adopt?*

The Board uses two approaches to monitor progress toward implementing its TMDLs. First, it requires dischargers to submit reports, including monitoring data, to determine whether they are in compliance. Second, the Board tries to independently gather data about the status of the affected water, either using its own staff or by contracting with scientists at the University of California or the United States Geological Survey. Because funds are scarce for independent monitoring, this activity is more limited than the Board would like. As the Board adopts more TMDLs, it will either need more resources for independent monitoring or it will require dischargers to shoulder more of the monitoring burden. Without reliable monitoring data, the TMDL program is ineffective.

The Water Board has a variety of tools it can use to enforce its TMDLs. It may prohibit waste discharges, it can issue cleanup and abatement orders, it can adopt cease-and-desist orders, and it can impose administrative civil liabilities. Since I believe water law is meaningless without enforcement, you may be sure that, if I am confirmed for another term, I will encourage the Board to use its enforcement tools appropriately and in a timely manner.

Enforcement of Water Quality Laws

10. *What enforcement options do you believe provides the most effective tools for violations of board orders?*

Having devoted 30 years to improving environmental quality, I take the Cal-EPA Secretary's criticisms of enforcement by the Regional Boards very seriously. The State Water Board responded to the Secretary's criticisms by creating an Office of Enforcement that reports directly to its Executive Director. This office is working closely with State and Regional Boards to set priorities and enforce water laws consistently.

Which tool is most effective to enforce Board orders depends on the discharger and the nature of the violation. Often, when the violation is a minor, one-time event, informal enforcement is all that is needed, namely staff simply either speaks to or writes to the discharger. Staff can also issue a staff enforcement letter, a notice to comply, or a notice of violation.

When a violation threatens serious environmental harm, the Water Board can require the discharger to stop polluting and clean up the discharge. It can also require the discharger to provide the Board with technical information to assess how much damage occurred. Some dischargers respond quickly to a Cleanup and Abatement Order and do not require further Board action. When the problem stems from an outdated or inadequate facility, a cease-and-desist order is most effective.

A discharger with a long history of noncompliance, who is causing serious environmental degradation, requires more severe enforcement actions. These include fines and civil or criminal prosecution. The Board can deter future violations, by the discharger and others, by imposing appropriate penalties.

The real measure of success is not the number of enforcement actions, but the condition of water quality. With adequate and stable funding for monitoring water quality, the Board would be better able to measure its success.

11. *What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?*

Fines and penalties are an important tool for enforcing the Porter-Cologne Water Quality Control Act because they can change behavior and deter future violations. Some firms gamble that they can save money, and therefore gain economic advantage, by violating water laws and paying the subsequent fine. In such cases, the fine should at least match the economic advantage derived from non-compliance. Others may cause significant environmental damage intentionally or through negligence. In such cases, a fine can signal the damage to a beneficial use that is not easily monetized, such as the ability to swim at a public beach.

Lake Tahoe

12. *Who will assist you in determining what water quality impacts are expected from the build out of the proposed piers, boat slips, and buoys? How will you determine if the impacts can be mitigated?*

The Lahontan Board has been trying to work with the Tahoe Regional Planning Agency (TRPA) to ensure that its new shorezone policies fully address the Lahontan Board's issues of concern. Lahontan Board staff reviewed TRPA's shorezone environmental impact statement and found it inadequate, precisely because it does not adequately describe how the water-quality impacts will be monitored and mitigated. The water-quality impacts of the proposed build out will not be from piers and buoys alone, but also from the increased boating that results – namely more nutrients, particulates, coliform and hydrocarbons, as well as an increased risk of introducing invasive aquatic species such as eurasian milfoil and zebra mussels. Without a complete assessment of potential water-quality impacts, or a detailed description of how these impacts would be mitigated, Lahontan cannot rely on TRPA's document to meet its own regulatory mandates. Moreover, a more logical approach would be for TRPA to develop its shorezone policy within the context of the Lake Tahoe TMDL implementation plan, which will be completed within the next couple of years.

As a result, the Lahontan Board and the State Lands Commission have combined efforts to encourage TRPA to adopt a new, more collaborative approach to developing its shorezone policy. The idea is to coordinate more closely with all state and federal agencies who share responsibility for Lake Tahoe's shorezone. This more open, collaborative approach will engage all available expertise to determine the impact of the new shorezone policy on water quality. Until this collaborative process is complete, Lahontan and the Lands Commission are encouraging TRPA to proceed more slowly. They propose an interim period during which new piers could be constructed outside spawning areas at the historic rate (about five per year), new buoys would not be allowed, and the water quality monitoring and boat sticker programs would begin.

13. Does the Lahontan board have plans for restoring the clarity of Lake Tahoe? Specifically, are nitrogen, phosphorus, and fine sediment loading being addressed?

The Lahontan Water Board and the Nevada Division of Environmental Protection (NDEP) are working together to develop a Total Maximum Daily Load (TMDL) for Lake Tahoe. For the past four years, the TMDL program has focused on estimating how much nitrogen, phosphorus, and fine sediment each source is contributing to Lake Tahoe. UC-Davis scientists, supported by state and federal funding, have developed a model that estimates how quickly clarity could be restored once pollution loading is reduced. One scenario predicts that 100 feet of clarity can be restored if pollutant loads are reduced by a third. That model is continuously being improved by incorporating new research. The Angora Fire, for example, will allow scientists to replace assumptions with real data about the effects of fire on water quality.

Teams of experts are currently determining how much nitrogen, phosphorus and fine sediment can be reduced from each of the major sources, from urban and forested uplands, to stream channels and air pollution. When completed, Lahontan and NDEP will share this information with stakeholders and other agencies, inviting them to help decide how much pollution should be reduced from each source. At the same time, TRPA is updating its regional plan and the Forest Service Lake Tahoe Management Unit is updating its forest plan. Lahontan, NDEP, TRPA and the Forest Service are all working together to ensure these plans work together.

Nitrate Contamination

14. How is the Lahontan board responding to the delays in the construction of the required tertiary sewage treatment plants? Has your board required the nitrate contaminated groundwater be cleaned up?

Lahontan is responding to the delays in the construction of the tertiary treatment plants in Los Angeles County Sanitation Districts 14 and 20 by getting tough, which is appropriate since this discharger has a long history of noncompliance and has caused serious environmental damage. In May 2007, the Lahontan Board rejected the settlement proposal presented by the Lahontan prosecution team and the Districts, voting unanimously to continue settlement negotiations in an effort to increase the amount of the base liability and require the Districts to pay additional penalties if they miss the final deadlines in the cease-and-desist orders (CDOs). The Board felt that the $4 million penalty originally proposed was not a sufficient deterrent given that the Districts have saved at least $8.7 million by not building these treatment plants in a timely manner. The Board also felt that, given the Districts' history, stipulated penalties were needed to ensure the treatment plants would be completed without further delay. The Board will revisit the issue in August, at which time it will entertain any new settlement offers and consider its options.

The Board is likely to soon adopt revised CDOs with new schedules for compliance because the schedules in the original CDOs now appear unachievable. When the Districts filed a lawsuit challenging the original CDO schedules, Lahontan contracted with an independent, experienced engineer to evaluate them. He concluded that building tertiary treatment plants takes longer than the original CDOs allowed. In addition, the original schedules assumed the Districts could comply by constructing unlined storage ponds, but the Lahontan Board subsequently decided that to protect groundwater from elevated TDS levels, the storage ponds had to be lined. This decision extended the time needed to comply.

In November 2003, the Lahontan Board issued a cleanup and abatement order requiring the County Sanitation District 20 to delineate, contain, and clean up the nitrate plume. So far, the District has delineated the plume and begun its cleanup. Lahontan has yet to set the final nitrate level the District must obtain because the cleanup adds a new consumptive use to a groundwater basin that is already overdrafted. The Lahontan Board needs more information to balance the damage to groundwater beneficial use with the demand on groundwater resources.

This completes my answers to your questions and I hope you find them satisfactory. Please feel free to call me if you have further questions.

In conclusion, I love the challenge of serving on the Board. It poses mind-bending puzzles to reconcile law and science in ways that fashion good public policy. As I hope my letter makes clear, I work hard to make the Lahontan Board an example of good governance, to ensure its decisions are responsive, transparent and fair. I hope the Senate Rules Committee will confirm me to another four-year term.

Sincerely,

Amy L. Horne, PhD

Enclosure: Form 700, Statement of Economic Interest

FRANCINE DIAMOND
LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

July 6, 2007

Nettie Sabelhaus, Rules Committee Appointments Director
California Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Dear Ms. Sabelhaus:

It is my pleasure to provide the following answers to the questions pertaining to my reappointment to the Los Angeles Regional Water Quality Control Board and asked by the Senate Rules Committee. Please do not hesitate to contact me if you or any of the Committee Members wish to discuss my responses or have additional questions.

Statement of Goals

1. *What are your goals as a member of the Los Angeles Regional Water Quality Control Board? What do you hope to accomplish during your term? How will you measure your success?*

My overarching goal—and responsibility—as a board member is to protect, restore, and enhance water quality throughout Los Angeles and Ventura Counties. For water bodies which are already degraded, my primary objective is to facilitate the timely, effective, but economical restoration of water quality so that the beneficial uses designated in the Board's Basin Plan can be realized. We also have many programs aimed at prevention of degradation of habitat and water quality (e.g., our 401-certification program). Prevention is always preferred to having to remedy degradation after the fact.

During my term I hope to improve not only the understanding, interaction and cooperation between the Regional Board, other governmental entities, the regulated community and environmental organizations but the quality and implementation of water quality regulations, policies, programs and permits. To achieve these goals I will champion greater outreach to and communication with interested communities, robust and open discussion of issues, decisional consistency and transparent decision making.

This year my direction to the staff has been to have more robust enforcement action and more referrals when appropriate to law enforcement. It was the sense of the Board at our most recent retreat that enforcement must be a high priority. Although compared to other regions we are doing well, I think we must do better. This year, I have asked

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Staff to update us at each Board meeting on the high priority enforcement cases as they move forward and what is coming up in the near future.

2. *What have been your most significant accomplishments as a member of the board?*

I have served on the Board since l999 and as Chair three times. I believe I have provided leadership to the Board which allowed it to move progressively forward in a manner which realizes the intent of the Clean Water Act and Porter Cologne. Under my leadership our Board has the most successful record of developing TMDL's in the state. Our enforcement program is robust because we understand that regulations are only effective if they are enforced. Even though our Board is quite diverse in outlook and experience, I have been able to lead my fellow board members to consensus even on the most controversial issues before us. I am very proud of the fact that our stakeholders in the regulated community and the environmental organizations feel both respected and listened to as we conduct our meetings in a manner that allows full participation and input to the Board and staff from the large number of stakeholders in our region. Even though our region is the most urban, most populous and has the most number of facilities under permit, we continue to lead in TMDL development, enforcement actions and nationally recognized MS4 permits and NPDES programs. I must give credit to a dedicated and overworked staff who I hope realize how much our demanding Board appreciates them. I am very proud of what we have accomplished and look forward to continuing this record of achievement in the Los Angeles region.

3. *What do you believe are the most serious problems facing your regional board*

The TMDL program has taken water quality regulation from the previous technology-based (do the best you can) approach to one that requires that water quality standards are met and beneficial uses (swimming, eating fish, drinking) are fully restored. This poses huge challenges for both Board staff and the regulated community as this much needed work is hugely resource intensive. For our agency, we must expend significant resources to ensure that cities and other permittees are on track to getting to clean water. Our funding is allocated based on development needs for TMDLs, but does not factor in the implementation, which at a minimum equals that of development. The resource burden of TMDL implementation falls on the permitting programs that are also underfunded.

Within the universe of TMDLs for coastal waters, protecting and restoring the quality of our coastal waters (beach water quality for our millions of swimmers and surfers) and estuarine and nearshore water quality for our fisheries are the biggest issues. This requires increased efforts and resources for the TMDL, stormwater, and NPDES programs.

More inland, our biggest challenge is to assist permitees in developing integrated solutions to cleaning up our waters. Where possible, this involves integrating solutions in a way to create habitat and recreational opportunities, and increasingly important, to augment our valuable local water supplies which are becoming more important given other demands on imported water supplies to Southern California.

Efforts to protect the ecological integrity of our natural stream courses in also increasingly important. An increased focus on impacts (erosion and impacts requiring concrete in our channels) from increased stormwater flows from developed areas with increased impervious surfaces requires that we focus more on early CEQA reviews (an entirely unfunded program), 401 certification reviews (a grossly underfunded program), and specific stormwater program requirements (e.g. low impact development) to abate this hydromodification threat to our most valuable natural stream courses.

State and Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, particularly considering these are part-time positions.

4. *Do the state board and your regional board staff assist you to better understand some of the complex issues before you if you request help? If not, where do you seek help when you need it? Do you have any suggestions on how the state water board's staff might better assist you?*

Board staff provides each board member a comprehensive agenda package prior to each Board meeting. The package includes an in-depth description of each agenda item, background information, scientific information, staff recommendations, public notices, public comments and responses from staff. At the board meeting staff provides a detailed presentation that generally includes a PowerPoint presentation on each agenda item. The board also has the ability to ask questions of both staff and members of the public who have made comments during the public hearing.

On occasion I have asked to meet with staff for clarification on specific agenda items prior to a Board vote. Staff briefings are available for significant items. I have found staff to be responsive and always willing to discuss and explain any item to me.

I have also found my fellow board members to be very responsive and willing to offer their understanding of issues.

Regarding improvement, each year the Board attends a retreat to identify and establish annual priorities and goals. It would be helpful—and greatly assist with achieving regulatory consistency and coordination—to have state board priorities and goals shared with the regional board during its annual retreat and, as appropriate, throughout

the year. We have also requested that State Board staff and management better seek and integrate early regional input into the development of policies that affect the regions. Efforts are being made in this area.

5. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

I have been a board member since 1999 and have attended several meetings during which Council has provided training on identifying, evaluating, preventing and reporting a potential or actual conflict of interest. During the Board's annual retreat, Council reviews conflict of interest prohibitions. During meetings, workshops and similar gatherings, Council assists Board Members with recognizing and successfully managing a decision or situation that could harbor a conflict of interest. Additionally, Council makes itself available to discuss with individual Board Members whether or not a particular situation or action creates a potential or real conflict of interest. I have no hesitancy asking for Councils' direction when I am faced with a situation or decision that may create a conflict of interest. To date, no issue before the Board has required me to recuse myself.

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop Total Maximum Daily Loads (TMDLs), and enforce permit and discharge requirements as well as state and federal water quality laws. However, regional board budgets are not reviewed individually by the Governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided through the state board appeals process instead of through a consistent statewide policy that is proactively established by the state board and implemented by the regional boards.

6. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?*

In order to protect and maintain the integrity of the appeal process (i.e., State Boards reviews Regional Board actions), there is limited interaction between State Board and Regional Board members on action items. The notable exception is the biannual meeting of State and Regional Board members to discuss general policy issues and set overarching goals and objectives for the Boards. At the staff level, there is regular—perhaps as often as daily—and substantive interaction between the boards.

Regarding statewide policy issues, it would be desirable to foster more communication between the State Board and the Regions on policy objectives and pitfalls by enhancing communication and involving the regions in advance of gathering general stakeholder input on proposed policy. It is certainly desired to vet important state policy issues through a broad stakeholder involved process rather than through decisions on a particular permit appeal where regional board and stakeholder input is limited and impacted parties from these precedential decisions do not have the opportunity to weigh in on the issues. In addition, it would be productive to initiate quarterly discussions—conference calls to examine new or evolving issues of mutual concern and to apprise one another on common or shared activities.

7. *How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?*

The Regional Boards are chronically under funded. The Boards get less then half of the resources that they need to fully implement and enforce the mandates. Almost half of the fees collected for NPDES and Stormwater within the region are used to support the program in other parts of the state. Additionally our Spills/Leaks Investigation and Cleanup Program have a backlog of over 300 sites where the responsible party is willing to pay for the Regional Board's oversight but the Regional Board is unable to conduct the oversight because we lack the authority to hire staff.

Regarding legal requirements that are not funded, EPA has a consent decree for TMDLs in our region, and we are required to adopt our TMDLs in advance of the EPA schedule (see answer # 11 as well). We estimate that we receive less than 50% of the funding that we need to fully implement this program. In addition, we review our Basin Plans every 3 years per the Clean Water Act. As part of this review, we assemble and prioritize a list of projects that our Board and the public think are critical to better our science and develop new policy to better protect water quality. We generally only have enough resources to fund about 10% of these projects identified as 3-year priorities in this critical program at the Board.

Cleaning Up Polluted Waters

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal storm water permit programs and Total Maximum Daily Load (TMDL) programs, which are required under the Federal Clean Water Act to improve water quality by limiting the amount of pollutants allowed into water bodies.

Currently, regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

8. *Please describe the status of your board's TMDL process. Does your board have adequate resources to develop and implement the required TMDLs?*

This Region produces, by far, the most TMDLs of any Region and has produced many precedential TMDLs, for example, the Santa Monica Bay Beaches bacteria TMDL and the Los Angeles River Trash TMDL. The aggressive schedule was set by Consent Decree (Heal the Bay, Inc.; Santa Monica Baykeeper, Inc. v. Browner, Case No. 98-4825 SBA, March 22, 1999) and is executed by an experienced TMDL staff. For efficiency, we combine impaired water bodies as much as reasonable and for achievability, we involve stakeholders as much as possible, in fact, the development of several TMDLs in the Los Angeles Region has been stakeholder-led.

However, resources are way less than the tasks require. A significant challenge for this board is management of the complex implementation schedules included in the adopted TMDLs as only the development of the TMDLs are funded. For TMDLs to work to improve water quality, an adaptive management approach must be used, necessitating work plans, special studies, implementation plans and compliance reports and consultation between Regional Board staff and the regulated agencies and municipalities, all in addition to the development of new TMDLs. Some implementation actions need to return to the Regional Board for decision. In addition, TMDL staff resources are spent on legal support for challenged TMDLs. These resource demands have not been considered in resource allocations.

While, recently, State Board staff have taken the lead on identifying impaired water bodies, this year the Regional Board staff will take the lead. Overall, this is more expeditious for the State because Regional Board staff has local knowledge and more data and the thorough identification of impaired waters will lead to expeditious cleanup. However, this effort will also necessitate a considerable commitment (several of our TMDL staff) of Regional Board staff time and this work is entirely un-funded.

9. *How will the board monitor and enforce the TMDLs it has or will adopt?*

All of the developed TMDLs require monitoring; typically, responsible parties develop approved monitoring plans and conduct the monitoring which is reported to the board. TMDLs become enforceable when they are made part of NPDES permits, WDRs or conditional waivers of WDRs. Most significant in this region for TMDL implementation are Municipal Separate Storm Sewer System (MS4) NPDES permits and the Conditional Waiver for Irrigated Lands. For example, in September 2006, the Board re-opened the Los Angeles County MS4 Permit to incorporate waste load allocations (WLA) for bacteria at beaches along Santa Monica Bay. Board staff have been tracking compliance with WLAs for bacteria at these beaches and following up as necessary with enforcement actions. This work is very staff intensive and is not funded. This work will simply displace other permitting priorities,

Enforcement of Water Quality Laws

Two years ago the office of the secretary of Cal-EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards were among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never sought criminal penalties for serious violations, and generally did not aggressively pursue violators.

10. What enforcement options do you believe provide the most effective tools for violations of board orders?

The Regional Board has been granted the authority to implement and enforce water quality laws, regulations, policies and plans to protect the waters of the state by the Porter-Cologne Act. Our goal is to enforce these laws by taking action in a fair, firm and consistent and timely manner in order to protect the beneficial uses of waters of the State, ensure compliance with RWQCB regulations, plans, policies, and orders, protect the public health and the environment, and deter potential violators. The Boards regulatory authority is based primarily on Porter Cologne Water Quality Control Act, the California Code of Regulations, Title 23, 40 CFR, and the Enforcement Policy. While a progressive enforcement approach usually proves to be the most effective tool to bring a discharger into compliance, we are not restricted from going directly to a formal enforcement action such as an ACL or referral to another agency, if warranted. The enforcement options available to the Regional Board to address non-compliance by dischargers follow:

Informal Enforcement Actions

- Verbal Enforcement Actions and Enforcement Letters
- Notice of Violation (NOV)

Formal Enforcement Actions

- Notices to Comply
- Notices of Stormwater Noncompliance
- Technical Reports and Investigations
- Cleanup and Abatement Orders (CAOs)
- Section 13300 Time Schedule Orders (TSOs)
- Section 13308 Time Schedule Orders (13308 TSOs)
- Cease And Desist Orders (CDOs)
- Modification Or Rescission Of Waste Discharge Requirements
- Administrative Civil Liability (ACL)
- Referrals To Attorney General, District Attorney, United States (U.S.) Attorney or City Attorney

The RWQCB or SWRCB can refer violations to the state Attorney General for civil enforcement actions. The RWQCB or SWRCB can also request the appropriate county District Attorney or City Attorney seek criminal prosecution. A superior court may be requested to impose civil or criminal penalties. In some cases (e.g., when the District

Attorney or Attorney General is unable or unwilling to accept a case), the RWQCB may find it appropriate to request the USEPA's criminal investigation division or the U.S. Attorney's Office to review potential violations of federal environmental statutes, including but not limited to the CWA, the Endangered Species Act, the Migratory Bird Treaty Act, or the Resource Conservation and Recovery Act

Our regional board takes enforcement seriously and has developed a system to prioritize enforcement, with a focus on violations that are likely to have the greatest impact on water quality. We actively refer cases to the Los Angeles City Attorney's Office, and to the Los Angeles County District Attorney, and we participate in task force meetings with prosecutors. Over ten cases referred to the LA City Attorney have been settled, resulting in over $l90, 000 being paid to the State Water Resources Board Cleanup and Abatement Account. Enforcement is a high priority of mine and of our Board, and I expect there will be even more referrals to law enforcement going forward.

11. *What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?*

Fines and penalties form an important part of any effective enforcement program. In this regions experience, we have found that penalties can provide a measure of compensation for the damage that pollution causes to the environment and ensure that polluters do not gain an economic advantage from violations of water quality laws. Furthermore, penalties can also help create an "even playing field," ensuring that dischargers who comply with the law are not placed at a competitive disadvantage by those who do not. It also deters potential violators and, thus, further protects the environment. Another benefit of fines and penalties is that a portion may be converted into Supplemental Environmental Projects that can benefit the communities and environment damaged by the violator.
Fines and penalties may not be appropriate in instances when the violation was clearly not the fault of the discharger, such as an action by a third party, a natural disaster, an act of God, and excursions encountered during facility upgrades.

MTBE

In 1995 MTBE, a gasoline additive, was found in about half of all the groundwater the city of Santa Monica used for its drinking water supply. By November 2003 the city and the three oil companies who were responsible for the contamination reached a settlement to construct a groundwater treatment facility to clean it up. As of March 2007, a total of 580 million gallons of groundwater has been treated.

The city and several oil companies have entered into a number of settlement agreements over the last 12 years. Most settlement agreements have included the requirement that replacement water must be provided to the city. Under these

provisions the city has received about $3 million annually to purchase replacement water. Another provision of the settlement agreements was that the oil companies would provide drinking water treatment for the city's drinking water wells.

12. *Under previous settlement agreements, the city of Santa Monica received replacement drinking water. The last agreement ended in 2005. Is the city of Santa Monica still receiving replacement drinking water?*

Yes. The Charnock wellfield supplied about 40% of municipal water supply for the city of Santa Monica. Right now, the Charnock wellfield is still not back on line and replacement water is still necessary. In 2006, the city re-negotiated with the settling major oil companies (Shell, Chevron, and ExxonMobil). Under the terms of the new agreement, and with funding provided through the settlement, the city has undertaken full responsibility to build and operate the treatment plant and bring the Charnock wellfield back to productive service. In the meantime, city will continue to rely on the imported water to meet its need and will pay for the replacement water cost.

13. *When can the city of Santa Monica begin to use the groundwater again for drinking water purposes?*

According to city's estimate, the Charnock groundwater treatment plant will be in operation in 2010.

14. *Under the settlement, will the groundwater be cleaned up or will treatment be provided to the water used for drinking purposes? If wellhead treatment is provided, will the groundwater basin ever be cleaned up?*

The city of Santa Monica executed a new agreement with three major oil companies (Shell, Chevron, and ExxonMobil) in 2006. Under this new agreement, the city will build a wellhead treatment plant at the Charnock wellfield and will be able to provide drinking water to its residents during 2010.

The Regional Board under its regulatory authority for the Underground Storage Tanks (UST) Program is responsible for assessment, monitoring and cleanup at leaking UST sites including the impacts from MTBE at the Charnock wellfield. Since 1996, Regional Board staff working jointly with USEPA has evaluated a total of 49 potential source sites in close proximity (approximately one mile) to the Charnock wellfield. Of these, 27 sites were directed by the Regional Board to conduct soil and groundwater investigation to determine the extent of any releases from leaking UST systems. A total of 21 source sites were identified and required to complete full site characterization, periodic monitoring and to perform cleanup of soil and/or groundwater. Since then, various cleanup activities have been completed and some are still ongoing. To date, cleanup has been completed at 11 sites and they have been granted case closure status. Source removal and cleanup actions at sites in the Charnock investigation area have resulted in the removal of approximately 4,300 pounds of MTBE from soils and 2,200 pounds of MTBE from groundwater.

There are currently more that 60 regional multi-depth groundwater monitoring wells that were installed to track the migration of MTBE to the Charnock wellfield. Moving forward, these regional wells will also be used to monitor water quality improvements within the Charnock Subbasin over time as the wellhead treatment plant is operated to first provide drinking water to residents of the city of Santa Monica and to track the restoration of the Charnock Subbasin. The combination of source removal and active site cleanup together with wellhead treatment will help to achieve the ultimate goal of restoring the full beneficial use of the Charnock Subbasin. This will also make the city of Santa Monica more self sufficient in providing drinking water to its residents and to eliminate or minimize the need to rely on replacement water from the Metropolitan Water District or other water wholesalers in the region.

Perchlorate Contamination

The Los Angeles region has 134 drinking water wells and 24 drinking water systems impacted by perchlorate contamination, according to the Department of Health Services. Perchlorate contamination has also been found at Department of Defense facilities, including two facilities in Van Nuys and one each in Downey, Azusa, Burbank, Santa Clarita, and Pomona.

There have been over 7,000 water samples taken for perchlorate testing. Currently, perchlorate sampling also includes testing for emerging chemicals of concern.

15. *What types of emerging chemicals of concern are you finding while monitoring groundwater for perchlorate?*

Other significant emerging chemicals being detected in groundwater, besides perchlorate include:

- N-Nitrosodimethylamine (NDMA),
- 1,4-dioxane,
- 1,2,3-trichloropropane; and
- Hexavalent chromium.

Each of these emerging chemicals is toxic and has been proven to be carcinogens or suspected carcinogens. Perchlorate is manufactured for use as an oxygen-adding component in solid propellants for rockets, missiles and fireworks. It is also used in certain munitions, fertilizers (up to 1%), fireworks, in the manufacture of matches, and in analytical chemistry. NDMA, on the other hand, is a liquid rocket fuel used by the military, aerospace (i.e. JPL or NASA) and Department of Defense (DOD) contractors and subcontractors. 1, 4-dioxane and 1, 2, 3-trichoropropane are volatile organic compound (VOC) stabilizers for chemicals such as perchloroethylene (PCE), trichloroethylene (TCE) and 1, 1, 1-trichloroethane (TCA). These stabilizers are difficult to remove from contaminated groundwater using conventional cleanup technologies and could double or triple treatment costs.

Hexavalent chromium is being detected through the use of better analytical laboratory methods and focused assessments of former DOD sites and plating shops. The main problem in San Fernando Valley is that there is no in-place treatment for chromium at any of USEPA's (Superfund VOC-remedy) drinking water treatment plants that serve the North Hollywood, Burbank or Glendale Operable Units.

Chromium VI Contamination

In the late1990s the federal EPA designated portions of the San Fernando Valley as a Superfund site because of industrial contamination of the soil and water by various compounds, including chromium VI. Chromium is metal widely used for the production of metal alloys and other industrial purposes. Metals and alloys that contain chromium are frequently used to manufacture automobiles, appliances, and other consumer products. There are a number of forms of chromium contamination. Chromium VI is more toxic than other forms but total chromium (or all forms of chromium) are also tested to determine contamination levels.

For several years the Los Angeles regional board staff has been conducting its phase II investigation of the San Fernando Valley chromium VI contamination. In January 2007 a routine sampling of a well in North Hollywood showed total chromium concentrations of 206 micrograms per liter of water, far above the state's maximum contaminant level of 50 micrograms per liter. The well was shut down. When it was retested in March the chromium level had increased to 392 micrograms per liter. The well was 1,000 feet south of the former Honeywell manufacturing facility, which has registered total chromium and chromium VI levels at 54,000 micrograms per liter.

16. *How is your board addressing this problem? Will it be possible for the groundwater to be cleaned up so that it can be used again for drinking water? How many other drinking water sources have been impacted by total chromium or chromium VI?*

To answer this question, I would like to put this in an historical perspective, First of all the Regional Board staff took enforcement action against Honeywell in 2003 in the form of issuing a Cleanup and Abatement Order (CAO) requiring complete assessment and cleanup of chemical pollutants, namely chromium. This Order was later revised in 2005 to include VOCs and emerging chemicals. It should also be pointed out that the impacted area is located within a federal Superfund operable unit known as the North Hollywood Operable Unit. These areas, and others in San Fernando Valley, were created under the *Comprehensive Environmental Response Compensation and Liability Act (CERCLA)* to address groundwater impacted by volatile organic compounds (VOCs) such as perchloroethylene (PCE), trichloroethylene (TCE) and nitrates.

Having said that and as a result of recent developments, the Regional Board's Executive Officer revised the existing Cleanup & Abatement Order against Honeywell to now require that they submit a water replacement plan to immediately institute remedial measures and expanded onsite and offsite assessment of suspected pollutants; volatile

organic compounds heavy metals and emerging chemicals (perchlorate, 1,4-dioxane, 1,2,3-trichloropropane and n-nitrosodimethylamine {NDMA}).

- Since this site falls within USEPA's Superfund North Hollywood Operable Unit (NHOU), follow-up meetings were held in February, March, April and May 2007 with Honeywell, its consultants, all the regulatory agencies {Regional Board, California Department of Health Services (CDHS), the Department of Toxic Substances Control (DTSC)}, the Watermaster and the main water purveyor, Los Angeles Department of Water and Power (LADWP). These meetings are intended to improve communication, coordinate responses and share resources to ensure timely corrective action(s).

- Regional Board adoption of revised *General Waste Discharge Requirements* (GWDR) on March 1, 2007, to offer dischargers several new cleanup technologies specific to hexavalent chromium remediation. Staff has received Honeywell's GWDR permit application and it is being processed for approval. This permit will allow for the treatment of chromium contamination in place at the former Honeywell facility.

- Revision of the Regional Board's CAO to Honeywell on March 19, 2007, to now require Honeywell to submit a water replacement plan to ensure treatment of the shut-down well, restoration of the affected well back to production (hopefully by year's end), protection of other nearby wells from spreading chromium pollution and more onsite assessment to ensure complete characterization of emerging chemicals, delineation of impacted areas while determining whether other sources exist.

- The water replacement plan is under review and comments have been received from, DHS, LADWP and USEPA. An approval letter will be sent out in a week.

- Under the new Honeywell CAO, there is a requirement for an expanded assessment since the high detections appear to have originated from areas outside former plating areas onsite. The expanded assessment work plan provided by Honeywell is currently under review by Regional Board staff, with comments and an approval letter to proceed within a week.

Yes. It will be possible for the groundwater to be cleaned up in this area and elsewhere in San Fernando Valley, but it will take time, money, consistent regulatory oversight and the cooperation of polluters to make this a reality. The technologies exist to treat the impacted groundwater. However, there are resource challenges on the regulatory side and in some cases, monetary challenges that apply to the dischargers.

Spreading chromium contamination has impacted the drinking water resources of the City of Glendale and to a much lesser degree, those operated by the City of Burbank. Elsewhere in Los Angeles County, the Regional Board has recognized a chromium threat or impact and has taken enforcement action against polluters in Los Angeles,

South Gate, Manhattan Beach, Paramount, Torrance, Compton, and Monrovia, La Mirada and Hawthorne.

17. *Is replacement water being supplied to residents in the San Fernando Valley? If so, by whom?*

We understand that LADWP is importing replacement water from Metropolitan Water District to blend and augment their drinking water resources. As yet, no production wells in San Fernando Valley have been affected by spreading chromium groundwater pollution to date. This is because production wells are normally designed to tap groundwater at much deeper levels of the San Fernando Valley Groundwater Basin aquifer, generally between 300 to 800 feet deep. The chromium pollution phenomenon affects monitoring, aeration and extraction wells completed within the upper 100 feet of the aquifer for the most part.

LADWP is one of the main drinking water suppliers in San Fernando Valley and they may be more qualified to answer questions regarding drinking water supply challenges that they face.

Polluted Beaches

According to the 2006-2007 Beach Report Card issued by Health Bay in May 2007, seven of the 10 most polluted beaches in the state were in Los Angeles County. Long Beach water quality continued to suffer all winter, culminating in Long Beach having the worst water quality in the state this past year. In a report released on January 24, 2007, the Los Angeles County auditor-controller disclosed that more than 90 percent of sewage spills in Los Angeles County since 2002 were neither officially recorded nor cleaned up.

18. *Why do you believe that water quality at Los Angeles County beaches declined in the 2006–2007 reporting period?*

In November 2004, as a result of the Santa Monica Bay Beaches Bacteria TMDL, environmental monitoring agencies modified their shoreline monitoring programs to collect water quality samples at "point zero", i.e. directly in front of flowing storm drains and creeks. Water access in front of these drains is not restricted and as a result children and adults play and swim in ocean water directly in front of storm drains. Therefore, the Santa Monica Bay Beaches Bacteria TMDL requires bacteria objectives to be met at these "worst case" locations. It follows that monitoring water quality directly in front of these drains and creeks is the most protective of the health of swimmers and necessary to track TMDL compliance. Other California counties continue to monitor water quality 25 to 50 yards away from storm drains and creek outlets where there has been significant dilution of the bacteria load from the storm drains and creeks. Therefore, this difference in sampling location explains a large part of the discrepancy between beach grades for Southern California and those for LA County for the years 2005-06 and 2006-07. Therefore, one cannot directly compare beach grades from LA

County with those from other counties due to this significant difference in sampling location; doing so makes LA County beaches appear worse than others - a potentially inaccurate conclusion.

Despite this change in monitoring, the beaches along Santa Monica Bay fared well in comparison with all Southern California beaches. Seventy six percent of Santa Monica Bay beaches scored as or B's during summer dry weather, dropping just slightly to 73% during dries weather year round. This was very similar to Southern California beaches as a whole, 79% of which received as and Bs during dry weather.

The other explanation for the decline in beach water quality was the poor water quality in Long Beach, which lowered the LA County average significantly. Eighty-eight percent of monitoring locations in Long Beach received fair-to-poor grades compared to the rest of LA County beaches, 73% of which received A's and B's. The Regional Board is working with the City of Long Beach to identify the sources of the water quality problems at these beaches. The Regional Board met with City officials in January to discuss the problem and approaches to address the problem, including surveys to evaluate public and private pumpout stations, electrical power plants, and storm drain outlets among other potential sources.

As a result of the Santa Monica Bay Beaches TMDL, there are a number of improvements and studies underway that should lead to improved water quality at some of the other Santa Monica Bay beaches identified on the "beach bummer" list. These include a low flow diversion at Castlerock and a new runoff and treatment and disinfection facility at Marie Canyon; and source identification studies in Ramirez Canyon (Paradise Cove), Escondido Canyon and Redondo Municipal Pier as well as a system wide evaluation of the Santa Monica Urban Runoff Recycling Facility (SMURRF). Additionally, an epidemiological study is planned at Avalon Beach and source abatement efforts at Cabrillo Beach are to be completed this year.

19. *What role can the Los Angeles regional water board play in making sure that sewage spills are reported to the proper authorities?*

Regional Boards can ensure that spills are reported to the proper authorities by:

- Including reporting requirements in permits, and
- Clarifying and simplifying the reporting process through the SSO WDR and CIWQS, for example.

During February 2007, the Regional Board amended the Monitoring and Reporting Programs of twenty-seven Publicly-Owned Treatment Works (Wastewater Treatment Plants) to require more expedited reporting of sewer overflows from their system that are, or probably will be, discharged into waters of the State (both groundwater or surface waters), within two hours after knowledge that the spill occurred. Reporting is required to be made to both the Regional Board and the local health officers or directors of environmental health. This reporting is necessary to protect public health, as sewer spills that eventually reach coastal waters can cause sickness to those exposed from

swimming, boating, etc., if they have contact with the water. This requirement for early reporting guarantees that beaches can be posted in a timelier manner so that the public is better informed about situations where it may be unsafe to enter the water.

Protecting and restoring water quality in the Los Angeles region is a critical and demanding task. While much has been accomplished since I was first appointed to the Regional Board, much more remains to be done. I look forward to my reappointment and continuing my efforts to preserve and enhance the quality of water throughout the Region's ten watersheds for the benefit of present and future generations.

Sincerely,

Francine Diamond
Chairperson, Los Angeles Regional Water Quality Control Board

July 9, 2007

Sen. Don Perata
California Senate Rules Committee
State Capitol
Room 420
Sacramento, CA 95814-4900

Members of the Senate Rules Committee:

Thank you for allowing me the opportunity to respond to your questions. I would be honored to serve as a member of the California Regional Quality Control Board, Region 9 (the "San Diego Regional Board" or "Board"). My responses correspond to the numbered paragraphs of questions in your June 25, 2007 letter addressed to me.

1. My goal is to become a leader on the San Diego Regional Board. I hope to lead this Board in the development of permits and rules which local government bodies and the public can understand and appreciate (with a sufficient degree of specificity). I hope to lead this Board to enhance public awareness of water quality issues, increase public participation in our deliberations and encourage a sense of individual responsibility among the members of the public.

   During my term on the Board I wish to join other Board members in developing rules that encourage the development of integrated technologies which enhance water quality and improve water conservation. I plan to encourage additional preservation and restoration of wetlands. Through my representation of the Board at the San Diego River Conservancy, I hope to enhance water quality through preservation of real property surrounding waterways.

   I hope to see results evident in more succinct and explicit permits and standards approved by the Board. Public participation and awareness will become apparent through public participation at our meetings and the balance of positive to negative feedback about our Board. A pervasive sense of individual responsibility for water quality will be difficult to measure.

   I will measure my success in leadership though my ability to cause any necessary changes to the permits and rules prepared by Board staff. To date, I have been chosen to represent the Board at the San Diego River Conservancy, and to serve as the hearing officer for the upcoming quasi-judicial hearings on the San Diego Bay Sediment Cleanup.

Senate Rules Committee
2007
Appointments

2. The most critical substantive problems facing our Board are storm water discharge management and implementation of a TMDL program. The interrelationship of our work with that of municipalities, particularly the storm water permit and local land use decisions, is of paramount importance. Limiting spills from sanitary sewer systems and completing the more significant cleanup and abatement projects are pressing matters for this Board (with the most significant being the San Diego Bay Sediment Cleanup).

   Our Board faces a loss of institutional knowledge. The loss of longstanding Board members coupled with the expected retirement of our Executive Officer and legal counsel create immense voids to fill. It will be incumbent upon all the current Board members to dedicate even more energy to the Board to make up for this loss, as well as to ensure the selection of a qualified Executive Officer. The loss of Board members has also caused meetings to be cancelled due to the lack of a quorum, and conflicts of interest cause certain items to be tabled pending future appointments. The Board is improving its information storage and retrieval systems which will allow for better decision making and monitoring.

3. The Regional Board staff members often fail to provide adequate assistance to enable an informed decision by the Board members. I have found the Regional board staff unresponsive to numerous questions I have posed at Board meetings. Staff is often unable to compare "apples to apples" when issues are raised by the public (responding to issues raised about BMPs in a "swale" by addressing conditions in a "stream") and staff are often unwilling to address the finer details of language written in permits and standards.

   Staff presentations are largely couched in terms of the "big picture," which is helpful for understanding the issues. However, staff must be prepared to address the details when the public and Board members wish to refine the details. Staff reports should make a better effort to reduce scientific technical data and legal analysis so that the attorneys can comprehend the scientific and the engineers can comprehend the legal. The Executive Officer of the San Diego Board is a reliable source of support and leadership.

   I have never been invited or encouraged to discuss any matters with staff prior to a Board meeting. Generally, I devote enough time in my schedule to review the materials. I have never taken advantage of the opportunity to receive individual support from the State Board staff, though I expect that opportunity will arise in conjunction with the San Diego Bay Sediment Cleanup. The state Board staff prepared a thorough analysis necessary for the San Diego Bay Sediment Cleanup. I plan to take advantage of advanced training offered by the State Board including the leadership academy.

4. Soon after my appointment, I received an excellent one-on-one legal counseling session with State Water Resources Control Board Assistant Chief Counsel Philip Wyels, including a discussion regarding conflicts of interest. I completed the standard State of

California conflicts of interest session via the internet and reviewed written materials on conflicts of interest and incompatible activities that Mr. Wyels provided to me.

I have provided legal services to cities and government agencies regarding conflicts of interest and compliance with Government Code section 1090. I am always alert to determine whether a particular decision impacts my interests more than the public generally. On two occasions I have withdrawn from a Board decision due to the fact that I have provided legal services to the interested parties (albeit unrelated to the matters then before the Board).

5. The State Board and Regional Boards coordinate their activities on common issues through the semi-annual Water Quality Coordinating Committee and the Management Coordination Committee. Regions Eight, Four and Nine have collaborated on the development of standardized practices for stream diversion and saltwater intrusion. The Executive Officers of the Regions collaborate to share information and gain from the lessons learned in each Region. Possibly more could be done to standardize the role of the Executive Officer.

Frances Spivey-Weber, the State Board liaison to Region Nine, has attended several meetings and participated in our strategic planning session. The Chairs from each Region meet to discuss common issues. The process by which matters are petitioned to the State Water Resources Board provides an opportunity for certain issues to be resolved in a unified manner.

Most issues are better resolved at the Regional level since the Regions are geographically different and confront different water quality problems. Certain Regions confront agricultural runoff and legacy mineral deposits which are quite different from those we confront in Region Nine where bacteria pollution from the storm water system is paramount. These different circumstances among Regions require the diversity of water quality management approaches that the Regional boards can develop and implement.

Allowing different practices among Regions permits each Region to develop appropriate solutions and thereby "raise the bar" for other Regions. In recent history, Region Nine has been successful in taking innovative leadership initiatives which may have not been encouraged under a unified state-wide approach to water quality control. Even improved administrative management, such as the drafting of a "regionalization paper" and the improvement of information availability on our website, has been facilitated by the operational independence of our Regional Board.

Certain issues should be addressed in a uniform manner, such as the administrative procedures and broadly applicable technological standards. Desalinization methods and practices should be standardized for a state-wide approach in order to create technological economies of scale. The State Board has adopted certain statewide discharge standards

including the statewide industrial waste discharge requirements and sanitary sewer overflow waste discharge requirement. The State sanitary sewer overflow waste discharge requirement was modeled after the sanitary sewer overflow waste discharge requirement developed by the San Diego Regional Board. Possibly the Regional Boards should be obligated to implement certain practices which are successful in other Regions.

6. The reality is that budget constraints inevitably place limits on this Board's ability to fully enforce the laws that we are charged with enforcing. Budgetary constraints have slowed this Board's efforts to assemble the administrative record necessary to release the staff technical report for the San Diego Bay Sediment Cleanup. This is unacceptable in a project so significant, and I have personally directed the staff to provide bi-weekly progress reports as to the status of the record so that the technical report may be released.

   The Board derives a substantial majority of its revenues from fees, a portion from general fund appropriations, a small portion of bond money for oversight duties and another small amount of federal funds. Fee revenues appear to be difficult to increase. The State Board takes a portion of fee revenues and any "excess fees." Most of the Regional Board's revenues are designated for a particular purpose. These budgetary constraints make it nearly impossible for the Board to add new staff charged with enforcing the laws, and, rather the Board may only reassign staff to perform enforcement duties.

   Based upon a previous needs analysis, the Board's staff should be approximately 130 people, rather than the 80 staff members presently working for the Board. The Board does need to allocate more money and staff to clear a backlog of work for basin planning, for development and implementation of TMDLs and for monitoring and enforcement of the storm water permit.

7. This Region held hearings on April 25, 2007 to receive comments and testimony on TMDL waste load reductions for bacteria. The Board accepted the presentation from staff and comments from the public. The Board left the hearing open and directed staff to prepare responses to the public comments it already received in order to allow further comments for a subsequent hearing. This Board subsequently adopted TMDLs for copper, lead, zinc and toxicity for the Chollas Creek.

   The adopted TMDLs for specific pollutants will be incorporated into the basin plan. Numeric limits will be adopted based upon the waste load reductions that the Board has approved. The Board will be required to adopt an implementing order through various NPDES permits (waste discharge requirements). In particular, it appears that the MS4 Storm Water permit will be the vehicle to implement the majority of the targeted waste load reductions through numeric limits.

   The Board could use additional funds in order to develop appropriate numeric limits, particularly better data resources and additional funds for monitoring. Based on the

present data resources, the numeric limits may not be as accurate as they may otherwise be if we had better information to develop the numeric limits. This Board may be able to achieve economics of scale by adopting TMDLs for multiple bodies of water and pollutants. For example, considering the pervasive impact of bacteria to a number of impaired water bodies in the San Diego Region, a single TMDL has been drafted for application to a number of impaired water bodies.

8. The Regional Board will expect the TMDLs to be implemented by the permittees largely through best management practices. The permittees will be subject to monitoring and reporting requirements to ensure satisfaction of the most stringent numeric targets based upon the water quality objectives for the designated beneficial uses of each impaired water body. In the case of bacteria, the apparent focus of monitoring for TMDLs will be to ensure the achievement of numeric targets based upon water quality objectives applicable to the Shellfish Harvesting beneficial use. For the Chollas Creek watershed numeric targets will be based upon water quality objectives applicable to Warm Freshwater Habitat beneficial use and Wildlife Habitat beneficial use.

   Appropriate sampling will be required over the prescribed intervals in wet weather conditions and dry weather conditions. Sampling and reporting should reflect achievement of the appropriate pollutant reductions within ten year (80% of total required reduction) and twenty year (100% of the required reduction) periods. Personally, as a regular consumer of steamed clams and mussels, I am constantly reminded of the necessity of achieving the most stringent water quality objectives for this beneficial use.

9. The Board should develop appropriate Supplemental Environmental Projects for enforcement of significant discharge violations. The Board should enforce fines and well-defined penalties for matters of less significance. This distinction will allow for the devotion of the appropriate level of staff resources to each violation and allow for a more swift and sure administration of justice. Criminal sanctions may be appropriate in situations where parties intentionally violate or disregard an order of the Regional Board.

   The Board should encourage staff to reach settlements of enforcement actions prior to holding a hearing. As an attorney who has practiced criminal, civil and administrative law, I am aware of the practical realities that could encourage resolution of administrative civil liability proceedings prior to such matters being heard by the Board. If staff are vested with independent authority and apply reasonable judgment to bring an appropriate penalty to a violation, and if the Board is willing to apply a more severe penalty than the staff, dischargers will have adequate incentive to settle their disputes prior to Board hearings.

   If the Board is more sensitive to reality and reasonable than our staff, parties will merely calculate their incremental attorney's fees and determine the likely cost and benefit. Certain dischargers (such as a large municipality or County) often have low incremental attorney's fees (due to in-house attorneys), and thus have little incentive to settle if its

officials believe the Board will be more reasonable than the staff. The Board should be willing to impose more severe penalties than those recommended by staff, and staff should be flexible and reasonable.

10. The Board staff appears to believe that Supplemental Environmental Projects are not always a better solution for significant violations, since the staff continues to bear responsibility for such projects throughout their completion. I do not believe this additional burden should discourage staff from developing the appropriate remedy in a timely manner as significant violations are investigated and processed as enforcement actions.

    Although fines and penalties deposited into the State Board cleanup and abatement account may be available for subsequent remediation of such violations, I believe Supplemental Environmental Projects are more timely and appropriate. I believe the swiftness and certainty of the imposition of a fine to a less-significant violation lessens the administrative burden of administering such fines.

11. The San Diego Regional Board went to great lengths to properly issue a waste discharge requirement (NPDES permit) to the IBWC for the South Bay Reclamation facility, while simultaneously executing a cease and desist order to require the IBWC to satisfy discharge requirements. After political realities quashed efforts to construct additional treatment facilities on the U.S. side of the border, the Bajagua project was conceived and received the political blessings necessary to become a reality (including the blessing of the IBWC).

    The IBWC's current relationship with the Bajagua project is incomprehensible. While the IBWC has issued a development permit to Bajagua, it now represents that it does not acknowledge the legitimacy of any waste discharge application by Bajagua. Responding to our Board's request, representatives of Bajagua provided materials to our Board to demonstrate their efforts to obtain entitlements in Mexico. Our Board's Executive Officer has received a discharge permit application from Bajagua, but declined to consider the application as the proper applicant should be the IBWC. The IBWC disassociated itself from the Bajagua application. Bajagua has since filed suit in state court against our Regional Board for failing to consider its application. We have addressed this litigation in closed session.

    Our Board has acted in conjunction with other agencies to address this significant problem. The State Board has provided staff support to coordinate our efforts with the U.S. Environmental Protection Agency to address the border area sewage overflow. We receive capable legal counsel from the California Attorney General's Office. Since I have been a member of this Board, other agencies (including the U.S. Environmental Protection Agency) have not attempted to assume any additional responsibility in order to remedy the IBWC's failures.

The issues of sewage overflow and storm water are not distinct when considering the U.S./Mexico border, as storm water distributes untreated sewage. Our Board has addressed the sewage overflow issues in conjunction with our efforts to address storm water pollution from the border. Furthermore, we considered the sewage, sediment and trash impact on water quality when providing a water quality certification for the border fence study. We have addressed sewage, sediment and trash impact while developing TMDLs for impaired bodies in the border region.

12. Our Board is placed in a nearly impossible position of seeking to enforce discharge requirements from the IBWC facility while being incapable of affecting the actions of the federal government and/or the governments of Mexico and the State of Baja California. The Board filed (and prosecuted with diligence) a federal lawsuit to enforce the terms of the cease and desist order that would bring about additional treatment capacity and improve sewage treatment from the advanced primary level to the secondary level. So long as the federal government declines to fund capital investment necessary to build adequate treatment capacity on the U.S. side of the border, and the IBWC continues to disavow the Bajagua project (which was publicly acclaimed as the solution to the border sewage problem), we are not on the verge of a solution. The federal district court has declined to impose sanctions on the U.S. IBWC, thus our ultimate recourse has been unsuccessful.

The Board has made efforts to raise attention at the federal level to the absence of appropriations for the investment in sewage capacity on the U.S. side of the border. Perhaps this lobbying effort will be successful and provide funding for such additional treatment capacity. As with immigration, no "solution" that is limited to the U.S. side of the border will be effective. Sewage overflows will continue to impact our coasts until adequate sewage treatment and storm water collection measures are taken in Mexico. I do not share the disposition against the Bajagua project that appears to influence the majority of our Board, but I have not been a first-hand witness to the history that has created the Board's attitude about Bajagua. Without any support from the IBWC, Bajagua's efforts are meaningless.

I am interested to see if our Board is able to obtain support for funding of additional treatment capacity on the U.S. side of the border from California's U.S. Senators. If the federal budget continues to preclude progress on enhanced capacity on the U.S. side of the border, and the Bajagua project continues to flounder, I will be interested to see if any monetary sanctions are ever imposed on the IBWC by the district court, and whether such sanctions could make an impact. Assuming none of these partial solutions bear fruit, I believe the Board should "think out of the box" and find methods for placing more responsibility upon the federal government.

I understand that we have the ability to transfer all of our control over the discharge requirement (NPDES permit) to the U.S. Environmental Protection Agency. If our diligent

efforts to enforce the permit continue to be frustrated by Congress, the U.S. IBWC and the federal court system, the U.S. Environmental Protection Agency may be able to bring about better results (particularly after a new administration takes control of the White House). Furthermore, considering that any treatment facility enhancement and satisfaction of discharge requirements is only a partial solution, the appropriate international measures should be taken to facilitate sewage, sediment and trash treatment in Mexico. The Mexican arm of the IBWC must become an active participant in these negotiations.

13. Our Region has made outstanding progress to reduce sewer spills and to improve the monitoring of such spills. In fact, the number of spills has been reduced significantly in recent history. The San Diego Region's sewage waste discharge requirement was used to develop the State model sewage waste discharge requirement. This Region's database on spills was also emulated by the State Board. In addition, our Board has taken measures to reduce the number of private sewage spills and increase the response to such spills.

The Board requires preparation of extensive technical reports following the occurrence of a spill. The Board has pursued enforcement actions against sanitation agencies responsible for the major spills in the Region. The Board has recast the issue of sewer overflows from being only a threat to the public health to one that impacts all of the beneficial uses of water in the Region.

Because of the Board's enforcement and monitoring, the sanitation districts in our Region have made significant investments in their sanitary sewer systems and inspection and reporting practices. Sanitation districts have invested in new equipment, pumps, inflatable blocking mechanisms, enhanced capacities, service contracts, larger wells and new technologies. Pipes are commonly monitored with cameras. Helicopters are used in the City of San Diego to fly over sanitary sewer system manhole covers which are painted so that any movement of the cover can be detected from the sky above.

Nevertheless, the sanitary sewer systems in this Region are old and in need of significant main and lateral replacements. Private laterals will always be exposed to root intrusion. The City of San Diego has followed through on its initial obligation to replace sewer lines. This process will continue for decades and sewer spills are likely to continue. Our Board's goal is to reduce the number of spills to zero, which is not the likely outcome, but the only goal that is appropriate. The Board's efforts have improved the responsiveness of the sanitation districts in this Region, which makes it less likely that spills will reach the unacceptable volume of those spills in the past. The volume of sewage spilled is the key measure of the Board's success. The problem of sewer spills is like most other water quality issues, one that requires a long-term management approach, not a quick-fix.

14. & 15.

The Navy has submitted a site assessment which sets forth the area affected by the fuel release and a corrective action plan. In April of 2007, the Regional Board staff completed its review of the assessment. The corrective action plan sets forth a plan to remove the fuel, but none of these measures have begun. The interim remediation measures continue to extract minimal amounts of fuel. The Board staff is scheduled to meet with the Navy on July 12, 2007 to discuss the specifics of the extraction. The Regional Board has not reviewed or approved the corrective action plan, but this matter should be placed on the Board's agenda.

Please do not hesitate to contact me at [redacted] if I can provide the Rules Committee with any additional information to assess my qualifications to serve on the Regional Water Quality Control Board.

Best regards,

David A. King

(55)

Elizabeth Pearson Schneider

July 2007

To: The Senate Rules Committee

Re: Confirmation -- My appointment to the San Diego Regional Water Quality Control Board – Answers to Questions

Thank you for providing me with the opportunity to respond to your questions regarding my confirmation to the San Diego Regional Water Quality Control Board. Please find below my answers.

Statement of Goals

1. I would like to accomplish four things:

   - For California to become the template, and set the standard, for other states throughout the United States as to how to bring the quality of our oceans, creeks, streams, etc. to levels that will ensure the health and safety of people and wildlife -- into perpetuity.
   - To educate people, businesses, organizations and other governmental bodies of the importance of water quality.
   - To help bring consistency throughout all the water boards as it relates to policies and enforcement.
   - To enact policies and develop enforcement in a way that is financially feasible -- and which can realistically be accomplished over a set period of time.

2. I believe the most problems facing our water board are:

   - A lack of awareness on the part of people, business, organizations and other governmental bodies of the economic impact that polluted waters can have on our State's economy.
   - A perception that our various water boards are inconsistent in their application and enforcement of policies.
   - A perception that implementing stringent permits and TMDLs cannot be accomplished without billions of dollars being expended.
   - A perception that the water boards are unwilling to provide tools that will aid permittees in complying with stringent policies and TMDL mandates.

State and Regional Board Roles

3. I believe the regional board staff is very helpful and that all staff has the best interests of the State at heart. I feel that the recent statewide workshops involving the public were excellent in terms of involving the public in the process and giving those who have negative perceptions of the board a more positive outlook. I think it also helped the board members and staff understand the major concerns of the public.

   The State staff could be more involved in ensuring that local jurisdictions are consistent in the application and enforcement of policies and could help ensure that the individual agendas of the local staff are not perceived by the public as being just that ... personal agendas.

4. The State water board's attorney, Phillip Wyel, spent an entire day educating me about the board and conflicts of interest. He did an excellent job. A manual was provided. The district's staff attorney is always available to answer our questions, and has done so wisely, in my case. As a 2nd term elected official, (City Council, City of Laguna Beach) I was, of course, sensitized to "conflicts of interest."

   I have recused on the issue of not being able to vote on the NPDES permit for my area (Orange County), but feel that this policy defeats the entire issue of having locals who are affected by the permits to be involved on the Board. The California Coastal Commission allows individuals on their boards to vote on issues from their jurisdictions (cities, counties) therefore, I'd like to recommend that this policy should be amended. I'm just one vote.

5. I believe the State Board does an excellent job interfacing with the local boards, however, I wonder if the State Board understands the perceptions by the public of the individual district boards and might suggest an annual survey to gauge those perceptions. (Could be completed online.)

6. I have heard from those who have talked to applicants that it takes a long time to get on the Agenda or to receive responses, so my perception is that there is a backlog, which I can only attribute to a huge project list and/or under-staffing.

<u>Cleaning Up Polluted Waters</u>

7. I believe our Board is on track in terms of developing and implementing the required TMDLs for our district. I think the reason that the boards may be behind is because the public demanded more time for inclusion in the process and I believe that this is the right thing to do. Further, I believe the public has a right to be allowed to use time frames and tools that will help them absorb the expense of complying.

8. There needs to be a methodical approach applied to the water bodies that need to be monitored, in terms of TMDLs. I believe the State and district boards must work together to establish the methodology.

Enforcement of Water Quality Laws

9. Re: violation of board orders – Clearly fines and penalties are effective – as is negative publicity.

10. If the Permits are issued and the TMDLs are mandated in such a way that allows a fair term of time to comply (a time frame that allows the absorbing of the major costs involved to implement) – and permit applicants and governmental bodies are allowed to use tools that will help them to more effectively comply, then fines and penalties should be used.

I believe first-year and/or first-time offenses should be warnings (educational in nature) and that subsequent offenses should have a sliding scale in dollar penalty.

Tijuana River Pollution

11. As the Water Board that deals with this issue, I have become intimately familiar with it. This is a MAJOR issue, and I have agreed that we take two parallel tracks to address this issue.

- continue to use legal efforts to force Mexico to address the issue
- go ahead and build our own treatment plant on our side of the border

I am disappointed that we have not been more aggressive in seeking Federal Funding to do this. I recommended at a recent Board Meeting that someone needed to contact Dianne Feinstein, who heads up "Authorization" and try to get funding IN THIS BUDGET to help us. I was told that staff usually does not take political action of this sort; therefore, I would encourage our legislators to do so as soon as possible. (Subsequently, someone quietly called Mrs. Feinstein and her representative in San Diego, James Peterson, called our staff to receive an update.)

To answer your question: I think the State water board has helped to advise us legally, however, I believe the district staff needs to encourage State water board staff to help us gain funding when it is necessary to address serious water quality issues.

12. We need to take charge and build our own water treatment plant in San Diego and ask Congress for help to fund it.

Sewage Overflows

13. I am fairly new to the San Diego Water Board (only since March this year), however, based on what I have seen thus far, the Board has been very active with hearings, penalties and fines as it relates to sewage polluters.

Fuel Leaks at a Federal Military Installation

14. Status of cleanup: The Defense Energy Support Center (DESC) along with the Naval Base Point Loma (Navy) personnel completed site assessment activities in 2006. Site assessment activities defined the horizontal and vertical extent of the release both on the federal property and offsite to the north into the La Playa residential community. DESC and the Navy submitted a Draft Site Assessment Report (in March 2007) including a Human Health Risk Assessment, and a Draft Corrective Action Plan (CAP) (in December 2006). The Regional Board recently completed its review of the above-mentioned documents on April 26, 2007. The Draft CAP proposes site-specific cleanup goals, presents a feasibility study, and proposes an appropriate remedial plan to remove the non-aqueous phase liquid (NAPL) petroleum hydrocarbons present in situ beneath the Fleet Industrial Supply Center (FISC) Fuel Facility.

15. Feasibility study and plan for cleanup: No formal cleanup has occurred yet, however DESC and the Navy continue to operate the free product extraction system which acts as an interim protective measure to control plume movement towards San Diego Bay. Regional Board staff is scheduled to meet with the Navy and its consultants to discuss design specifics of the preferred remedial action (e.g. free product extraction system) on July 12, 2007.

William Peacock's
Responses to June 22, 2007 Questions from the Senate Rules Committee

Statement of Goals

1. What are your goals as a member of the San Francisco Bay Regional Water Quality Control Board? What do you hope to accomplish during your term? How will you measure success?

The goal of any board member should be clear: to protect and improve water quality. To be able to quantify protection and improvement is a challenge, though I believe that the latter aspect, measuring "improvement", or its opposite, "degradation", is progressing rapidly through enhanced monitoring technology and better scientific understanding. Measuring "protection" appears to be a tougher quantitative problem because it is more difficult to quantify. Either and both require the usual tests of good public policy: balance and common sense. Those who ultimately pay for these improvements are "the public", whether it be through visible and direct higher taxes or in hidden costs involved in higher expenditures to polluting or discharging businesses and municipalities that ultimately are passed on to the consuming public. One of the things I would like to accomplish is better linkages on practices and technology with other regional water boards so each does not have to re-invent the wheel, so to speak.

2. What do you believe are the most serious problems facing your regional board?

The most serious water quality problems facing the Regional Water Board have to do with protecting water quality given increased demands on water supplies, urbanization in the outer reaches of the Region, and global climate change. However, even more significant is that the board must address these problems with ever dwindling resources. In that regard, the board has various paths available to solve the problems facing it: it can continue to try to do more with less, with the likelihood that the quality or quantity of its important work will diminish. It can enhance its effectiveness as constrained by limited resources with greater outreach: positive in educational awareness and preventative by publicizing non-compliance and irresponsible behavior by dischargers. It can, with the help of the State Water Board, determine the latest and best practices available to address water quality problems, so as to be effective if not efficient. And it can work with stakeholders to change the partial perception that it regulates just because it can. Its resource problems should not be solved by allowing it to retain proceeds from violation fines and penalties. As it faces newly determined sources of water degradation without greater resources, it must develop more effective ways of prioritizing what pollutants rise to the top of the list.

State and Regional Board Roles

3. Do the state board and your regional board staff assist you to better understand some of the complex issues before you if you request help? If not, where do you seek help when you need it? Do you have any suggestions on how the state water board's staff might better assist you?

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In my short tenure, I have had little contact with the State Water Board staff, and the recent briefing by Gary Wolff, Vice Chair of the State Board, to the Regional Water Board was most helpful. The State Water Board appears to have an opportunity to provide better background data and information to help explain its overall policy objectives in connection with the need for the regional water boards to adhere to their objectives and tailoring policy implementation to regional surface and underground specifics. Perhaps a stated explanation from our Region's staff regarding any gaps, differences or deviations from the State policy would be helpful in each of the decision memoranda we are provided. Obviously, State-wide mandated policy must be followed, but it seems a more rational policy-making system would avoid creating the less visible mandates through the appeals process as contrasted with the fuller but more time-consuming public participation process.

As an example of my own case as an undesignated public member, I have only been on the board for a few meetings, and I am surprised that our Region appears to be significantly behind Los Angeles in the area of regulating surface water trash pollution and remediation. My sense is that this issue is a good example of where there may be an opportunity for the State Water Board to promote more cross-fertilization of applicable and available technologies that have worked well in one region for others.

As for the help from the Regional staff, I have been positively impressed by their responsiveness and ability to explain complex technical issues. My sense, based on my experience in the White House, the Pentagon and with DOE, as well as a business executive, that more attention might well be placed, as required in the case of 13267 letters, on examining briefly the cost-benefit impact, except of course where there is an absolute mandate, of the decisions we have to make or judge. Upon occasion, no verbalization of this question has been present.

4. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?

I have been impressed with the competence and clarity of the legal advice I have received. State Water Board Office of Chief Counsel attorneys Phil Wyels, Dorothy Dickey and Yuri Won have all provided understandable advice in addition to my own basic understandings of these issues. Our board receives the Agenda package for each of our monthly board meetings about a week before the meetings, and I review it for such issues.

This advice has been in addition to the required online Core Ethics Orientation and the State Water Board's Supplemental Ethics Training for Designated Employees.

In my short tenure, I have recused myself from voting on two issues: in one case, I knew socially one of the respondents from previous association with him in charitable fundraising activities, and in another case, because of a brief but temporary (15) minute illness, I had to

step outside and thereby missed a portion of testimony and felt it would not be fair to that party to vote.

5. What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?

I recognize that the State Water Board approves all policies/Basin Plan amendments after Regional Water Board adoption and may review Regional Water Board-issued permits to assure that they are consistent with statewide policies. However, as noted above, it makes sense to me that regional water boards act independently regarding TMDLs and NPDES permits where different environmental considerations exist. After a few meetings, I am impressed with the opportunity for the experience of all regional water boards to be viewed as a resource of what works and what does not work, and my sense is that while this coordination is increasing, it has a ways to go to help further the ultimate objective to protect and improve water quality. From our recent briefings, it appears that there are greater efforts and agreements to improve coordination and accountability.

Similarly, there are policy issues that should be relatively congruent if not absolutely consistent across California. As I continue to become more informed, my sense is that all the regional water boards should have clear-cut understandings of the difference, and more effort in this area of coordination and accountability seems warranted.

6. How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?

The current staffing and funding levels appear insufficient to me to address and enforce the laws in an efficient manner, and thus this necessary allocation of scarcity appears to require a degree of triage under time and financial pressure that may well not work to the advantage of the ultimate objective: to protect and improve water quality.

The main tools for applying our board's staffing resources are annual workplans prepared by staff for all key programs, with the goal of establishing commitments and performance measures that focus on addressing high priority water quality needs while satisfying regulatory and legislative mandates, and to the extent possible, stakeholder interests. I'd like to see the Regional Water Board give more attention to preventing pollution rather than requiring cleanup after the damage has been done.

Cleaning Up Polluted Waters

7. Please describe the status of your board's TMDL process. Does your board have adequate resources to develop and implement the required TMDL's?

Our board has adopted or will soon be considering TMDLs for about a third of our Region's impaired water listings. These TMDLs that address pathogen, sediment, pesticides, PCBs, and mercury impairments provide a foundation and examples that should help staff develop

TMDLs more efficiently in the future. With more staff, our board would obviously be able to develop more TMDLs in a shorter time frame, but the bigger challenge is implementation. TMDLs are useful for prioritizing work to focus on our most urgent and pressing water quality needs while working within the existing budget, but by design, our TMDLs are generating implementation challenges beyond the status quo. My understanding is that our board staff is nearing the tipping point where without additional resources the board will have to decide between implementing existing TMDLs versus developing new ones for remaining impairments.

8. How will the board monitor and enforce the TMDLs it has or will adopt?

With enhanced regional monitoring, the regional water boards will better be able to discern trends either way. Greater coordination between State and federal experiences will help bring best practices to the fore, and TMDLs can be changed if pollutant levels are seen to change or there are changes to the 303d list. TMDLs will be implemented and enforced through existing regulatory programs such as NPDES permits for wastewater and stormwater discharges. In particular, our staff is developing a regional municipal stormwater permit that will provide the means to track and enforce the urban stormwater runoff component of TMDLs. A key challenge will be monitoring and enforcing actions to control nonpoint sources that are not currently regulated. In this area, the Regional Water Board is working to build watershed coalitions that provide incentives for compliance.

Enforcement of Water Quality Laws

9. What enforcement options do you believe provides the most effective tools for violations of board orders?

Levying fines or imposing administrative civil liability in response to permit violations provides incentive to comply and communicates to the public that we are serious about protecting water quality. My understanding is that this Region has collected approximately $4,000,000 in fines over the past year, and that appears to show excellent assertiveness on the part of the board staff but concomitantly rather sub-optimal concern on the part of dischargers. While the fines, like other costs, are theoretically passed on to the public by industry or municipalities, violators cannot pass on negative publicity. My sense is that this tool should be used with greater force within the confines of common sense.

10. What roles do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?

Fines should be proportional as well as fair - a billion dollar corporation should not have the same fine for the same negligent act of discharge as a mom and pop store. Also please see 9 above regarding adverse publicity. In some situations, fines should be based on impact to water quality or the cost to restore a beneficial use. For example, when there has been an illegal discharge, the fine should be based on the amount of pollutant discharged and downstream impacts. In other cases, fines are used to penalize dischargers for not complying with regulatory requirements such as conducting monitoring or submitting reports on time.

For these types of violations, the penalties for non-compliance should be clear and consistently applied. Fines and penalties may not be appropriate when a discharger is doing all that is technically and economically feasible to correct the problem and their money is better-spent further exploring ways to improve the problem.

Water Quality in the San Francisco Bay Region

11. How are you informed about the presence of pollutants such as PBDE? Is your board addressing PBDE pollution? Please explain.

Our Region is fortunate to have the San Francisco Bay Regional Monitoring Program (RMP), which is a program funded by all San Francisco Bay dischargers. The RMP is designed to provide up-to-date information on pollutants of concern. Every year with active participation by our staff, the RMP publishes a report on the health of the Bay and recent scientific findings. Through publications such as this one, and staff presentations to the board, I am able to stay well informed on emerging issues. The board staff provided a brief overview of PBDE contamination in the Bay at the May meeting. In my view, it is appropriate to reconsider whether PBDE should be listed as an impairment if the additional research indicates sufficient levels to impact humans or wildlife. Through the RMP and discharger special studies, our staff is evaluating PBDE loads to the Bay, biological effects, sources, and pathways.

Trash Pollution

12. How might the Municipal Regional Stormwater Permit (MRP) affect the deposition of trash in the region? What other improvements should be expected?

One of the most surprising issues to me since I joined the board has been the evidence that the Los Angeles basin has much more stringent and apparently effective technologies-why let L.A. set the standard just because they have several concrete riverbeds? Litter and waste are visual pollutants, but the lack of responsibility for those doing the pollution is appalling, and our regulatory agencies can do a much more effective job through awareness campaigns. It must be a short list of those who have ever paid the posted $1000 littering fine.

The recent action by San Francisco regarding bottled water is an example of creating awareness and changing the public perception about the degradation caused by un-recycled plastic bottles. The MRP will push municipalities to make trash prevention and controls a high priority. Changing the public's habits via outreach and enforcement, and providing alternative trash disposal options can reduce the amount of trash dumped into creeks and the Bay. Installing devices in storm drains to capture and remove trash will also result in improvements.

Responses to Questions from the Senate Rules Committee

Statement of Goals

1. What are your goals as a member of the San Francisco Bay Regional Water Quality Control Board? What do you hope to accomplish during your term? How will you measure success?

My goal is straightforward: to protect and improve water quality, and to do so in ways that are as efficient as possible for the affected businesses and taxpayers. I will be pleased if, at the end of my term, measurable decreases in contamination of surface waters and underwater sediments are documented by the regional monitoring network. At the same time, it will be important to achieve such improvements in environmental condition by optimizing the limited resources available to dischargers, many of which are municipalities or other public entities.

2. What do you believe are the most serious problems facing your regional board?

The regional board faces at least three challenges. First, a number of well-known contaminants (such as mercury, selenium, dioxins, and the mixtures causing sediment toxicity) are still causing adverse effects in waters of the region despite years of regulation. Second, a new generation of emerging contaminants (including pharmaceuticals and consumer products such as PBDE) may require regulation, depending upon the outcome of current scientific investigations. Third, discharges from most of the "easy" sources already have been addressed; further improvements in water quality often will require implementation schemes involving an array of unconventional sources.

The convergence of these three issues creates yet another: the sheer volume of work that faces the board. It will be a challenge to address emerging contaminant issues while maintaining the capacity to carry out existing regulatory mandates.

State and Regional Board Roles

3. Do the state board and your regional board staff assist you to better understand some of the complex issues before you if you request help? If not, where do you seek help when you need it? Do you have any suggestions on how the state water board's staff might better assist you?

To date, I have been impressed with the technical competence of the board staff, the clarity of their presentations, and their responsiveness to my questions. When I feel the need for information in addition to that the board staff has provided -- and the matter at hand does not preclude me from making outside contacts -- I have sought out members of the scientific community (including the San Francisco Estuary Institute) to obtain pertinent background information.

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There may well be occasions where state board staff could provide useful background information, such as the reasoning behind certain elements of the State Implementation Plan or applications of antidegradation policy. In situations where other regional boards have faced similar issues, such as the trash problem, the state board also may be able to provide information on successful and unsuccessful methods that have been tried in other regions.

4. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?

The state board attorneys provided me more than six hours of personal briefings, primarily geared towards conflicts of interest and limits on Ex Parte communications. This personal briefing is in addition to the required online Core Ethics Orientation and the state board's Supplemental Ethics Training for Designated Employees.

Prior to each board meeting I review the agenda for potential conflicts. In addition, the state board attorney assigned to the regional board (Ms. Dorothy Dickey) has developed a system with a representative of my husband's law firm to flag any matters where a potential conflict may arise due to my husband's employment; should such a matter arise, she will advise me about my duties under the conflict of interest and bias laws.

Thus far, I have recused myself from voting on one issue. In this case my husband's law firm had earlier represented one of the parties involved in a site cleanup; although I was advised that there was no conflict of interest, I felt it appropriate to avoid any appearance of a conflict and recused myself from participation in the matter.

5. What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?

In my view it is appropriate for the regional boards to act independently in matters that are intrinsically different in the different regions (such as local TMDLs and other permitting actions); and conversely for the state board to act on issues that are the same across regions (such as the methodology for determining sediment quality objectives). When those policy issues that should be consistent statewide are decided through the state board appeals process instead of proactively, the regional boards arguably join industry and the public in being ill-served. It is my understanding, however, that new mechanisms are now in place to try to enhance both coordination and accountability.

6. How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?

It is a challenge to address the current regulatory mandates at current budget levels. One result of tight funding is that timelines are longer and at times frustratingly slow, which helps neither the environment nor the regulated community. Another hidden cost may be an inability for board staff to invest sufficient time initially to craft the most efficient long-term solution to a new problem.

Cleaning Up Polluted Waters

7. Please describe the status of your board's TMDL process. Does your board have adequate resources to develop and implement the required TMDL's?

Based on its current schedule, The San Francisco Bay Regional Water Quality Control Board will require a decade to complete its current list of TMDLs. Implementation of some of the TMDLs will be resource-intensive. It appears therefore that additional resources could be used beneficially to develop and implement TMDLs more rapidly, with resulting more rapid improvements in water quality.

8. How will the board monitor and enforce the TMDLs it has or will adopt?

Controlling a number of high-profile pollutants, including many for which the board is scheduled to implement TMDLs, will require dealing with numerous small sources that have not been under the board's regulatory umbrella in the past -- as well as improving the effectiveness of stormwater controls. Given this situation, it will be very challenging to create an effective regulatory system that is not cumbersome for the regulated community. Some promising approaches might include: choosing control options that address several pollutants at once, piggybacking onto already-existing enforcement mechanisms, using economic incentives and "offset" or trading programs where appropriate, and building on successful certification programs in the private sector.

Enforcement of Water Quality Laws

9. What enforcement options do you believe provides the most effective tools for violations of board orders?

In my view, it is important to have a diverse array of tools that can be used to respond to different types of violations. For extreme violations, criminal penalties (e.g., for fraud) and mandatory penalties (e.g., for continued controllable violations) would seem most effective. In other circumstances, less stringent measures may be sufficient to assure timely compliance.

10. What roles do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?

Fines should be high enough and penalties severe enough to provide a meaningful disincentive for dischargers who otherwise might not pursue compliance aggressively.

Penalties would not be appropriate when violations occur for reasons that are unforeseeable and uncontrollable by the discharging entity.

Water Quality in the San Francisco Bay Region

11. How are you informed about the presence of pollutants such as PBDE? Is your board addressing PBDE pollution? Please explain.

At the May board meeting, board staff provided a brief overview of PBDE contamination in San Francisco Bay. In addition, I generally obtain information about emerging pollutants such as PBDE from outside sources such as scientific journals, newspapers, and the web. It is my understanding that PBDE pollution was considered for addition to the 303(d) list in our region in 2006, but the proposed listing was rejected for lack of evidence; it is also my understanding that the board has taken steps to improve the information base for doing such an assessment and is revisiting the issue as part of the current 303(d) assessment. In my view it is appropriate to reconsider PBDE for listing (or other actions) as soon as new information is available to show that exposure is occurring to biota and/or people at levels likely to cause adverse effects.

Trash Pollution

12. How might the Municipal Regional Stormwater Permit affect the deposition of trash in the region? What other improvements should be expected?

In my view, the Municipal Regional Stormwater Permit is an appropriate vehicle for addressing the deposition of trash, which is not only an eyesore for us, but ultimately a hazard for aquatic biota. Although I remain open to considering all the views that will be presented at the hearing, my initial inclination is to require a dramatic and measurable decrease in trash accumulation by the end of the permit term. The Municipal Regional Stormwater Permit also provides a vehicle for decreasing the loads of other important pollutants such as mercury and PCBs.

July 10, 2007

Chairman Don Perata
SENATE RULES COMMITTEE
State Capitol, Room 420
Sacrament, California 95814-4900

Dear Chairman Perata:

In accordance with your request, I have addressed your questions in my statements below with regard to the confirmation hearing for my appointment to the Santa Ana Regional Water Quality Control Board. There has been no change to my Form 700 since it was filed last February.

Statement of Goals

1. What are your goals and objectives as a member of the Santa Ana Regional Water Quality Control Board? What do you hope to accomplish during your term? How will you measure success?

My main goal is to make sure that the Board gives staff the appropriate directions to make sure that there is a balance between preserving our State's precious water bodies and the economic progress in our State and Region.

I also want to ensure that the responsible parties are held accountable for the perchlorate contamination in the Rialto-Colton basins, that the region's salt management plan be appropriately implemented, that the adverse water quality effects of the use of septic tank/leachfield systems in areas unacceptable for such uses be addressed, and that TMDLs for the region continue to be developed using the best possible science and as expeditiously as possible.

2 and 3. What have been your most significant accomplishments as a member of the Santa Ana Regional Water Quality Control Board, and what do you believe are the most serious problems facing your regional board?

I believe that the most significant issue in the region is our adverse salt balance. Without salt management (TDS controls on wastewater treatment plants, dairies and recharge operations), we would face very serious problems in the future. Perchlorate gets more press, but it is technically easier to deal with if funds are available. We now have a number of desalter facilities in the region that are beginning to address some of the salt issues. These desalters are being developed in conjunction with integrated water supply

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plans that incorporate water generated by desalters treating salt-contaminated ground waters. As part of the Salt Management Plan adopted by the Regional Board into the Basin Plan, we are now actively implementing salt management provisions for all discharges from point sources and non-point sources, such as dairies. Salt management activities include regulation of the recharge of imported water sources, such as from the Colorado River and the State Water Project.

Another significant regional problem is the use of septic tank/leachfield disposal systems in areas where subsurface conditions are inappropriate for this purpose (shallow soils, high ground water, underlying bedrock, etc). One major site is the Quail Valley area, which has recently been addressed by a board-adopted basin plan amendment. As staff resources allow, we need to address other areas, such as Lake Williams in the Big Bear Lake Basin, other areas in the San Jacinto Basin, and in the Beaumont area. We have new data indicating that pharmaceuticals and other emerging contaminants are being found in the groundwater underlying areas with widespread use of septic tanks.

Perchlorate is also very important and has been an enormous staff resource drain. This is a subject that will be a matter of significant concern for the regional board and staff for the foreseeable future as new contaminated areas are identified.

State and Board Roles

4. Do the state board and your regional board staff assist you to better understand some of the complex issues before you if you request help? If not, where do you seek help when you need it? Do you have any suggestions on how the state water board's staff might better assist you?

State Board staff has very little opportunity or resources to provide assistance to board members for issues that come before the Regional Board. Even for those issues that have statewide significance, there is usually a Regional Board staff person who acts as liaison, and who acts to present these issues to the Board. However, the State Board Office of the Chief Counsel has been very helpful to this Regional Board in providing legal assistance for those cases where functions have to be separated for those staff members who are advising the board and those who are actually prosecuting a case.

We normally go to our Executive Officer when we need help.

The issue of whether Regional Board staff provides enough information to allow us to understand complex scientific and water quality matters that comes before the Board might be evaluated in light of our Board presentations. Some might feel that the presentations are too detailed, but they are intended to provide board members with the background necessary to understand issues and to make decisions about difficult or complex matters. These presentations are also intended to establish a "record" on complex matters, and that record is supposed to represent the body of information upon which we base our decision.

5. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on you board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to the board?

1. Briefing by Regional Board attorney and Executive Officer upon appointment of new board members

2. On line training by California Attorney General concerning conflicts of interest

3. Training at the Water Quality Coordinating Committee by the SWRCB Chief Counsel

4. Knowing when it is appropriate to withdraw from voting when there might be a conflict of interest comes from the information provided by the training on ex parte and conflict matters provided for each regional board member, as well as ongoing monitoring by the Board's attorney and Executive Officer.

6. What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?

Most of the opportunities for coordination with the state board come through the Chairs meetings and the WQCC's that have been held over the years. Could coordination and accountability be improved? Sure, but at what expense? Each additional step of coordination costs lots of time. Over the years, I have noted that with the nine regions, various points of view, and those points of view rarely coincide with that of the state board. We have regional perspectives, the state board is supposed to have a state perspective, and those will not necessarily be the same.

Better coordination in establishing and implementing rationale for resource distribution between the state board and the regions could be improved. There are times when that process could use more transparency, or at least, clarity.

7. How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?

We have been informed by staff that an analysis by the Legislative Analyst found that the regional boards are funded for no more than approximately 50% of what is needed to perform all board responsibilities." We always have to make choices between all of our

responsibilities, and there are many instances when some matters simply cannot be addressed by the level of funding received.

Based on the funding gap, there are lots of things that we should be doing. For instance, there are many basin planning matters that should be addressed in order to properly update the region's basin plan. In fact, the region's salt management plan was funded by the region's stakeholders who believed they could not wait for state funding to be available to address the regional needs. We are unable to undertake all of the enforcement matters that we should. We prioritize those matters to address the most egregious, but cannot prioritize for the less significant mandatory penalty complaints. The board is required to assess mandatory minimum penalties for violations of permit effluent limits. We do so, but often, only significantly in arrears when many of the violations are quite stale, perhaps even a year or more later, when enough violations occur to make the process more efficient, given resource limitations. We are significantly behind in addressing TMDL matters due to funding, and hence, staffing and data constraints. There could be a lot of improvements in all of these areas if funding were available.

Cleaning Up Polluted Waters

8. Please describe the status of your board's TMDL process. Does your board have adequate resources to develop and implement the required TMDLs?

There are many different milestone dates later this year, and over the next few years, for the development and implementation of TMDLs in the region. The schedule is not being met in all instances. Mostly, because the process of developing the TMDLs seems to repeatedly lead to a conclusion that additional science needs to be generated so that a decision can be based on sound science, instead of conjecture or inadequate science. Generating science costs money and takes time. The staff of this region has taken a position, supported by the regional board, that it is better to incur the displeasure of others caused by delays, rather than to suggest poorly-supported TMDLs based on inadequate or inappropriate science. Implementation of TMDLs is often woefully expensive. It would be poor public policy to require enormous expenditures without adequate scientific basis.

TMDLs will be coming to the board for final consideration, both later this year and next year. There are no easy TMDLs left for the board to consider. The TMDLs being proposed are complicated and very costly.

There are not adequate resources to develop and implement the required TMDLs. Besides needing significantly more staff to work on these matters, funding is also needed to generate the sound science on which to base TMDL decisions.

9. How will the board monitor and enforce the TMDLs it has or will adopt?

The most important steps in monitoring, implementing and enforcing TMDLs is to include the TMDL provisions in both waste discharge requirements and in the updates of the water quality control plans. In this region, TMDL requirements have been included in specific individual waste discharge permits, general waste discharge permits and in basin plan provisions.

Also, other agencies have a responsibility to do their share with respect to the implementation of TMDLs. This is why TMDL provisions have been included in the area-wide storm water permits, which are the responsibility of county and municipal entities to implement. We ensure that they meet this responsibility by enforcing the permit conditions.

Enforcement of Water Quality Laws

10. What enforcement options do you believe provide the most effective tools for violations of board orders?

Administrative civil liabilities are the most effective of the board's enforcement tools. These can be issued by the Executive Officer, and if they are resolved, there is no need to hold a board hearing. This allows a matter to be handled efficiently, without having to wait for the next scheduled regional board meeting. If the matter is not resolved, then the ACL is brought to the regional board for consideration. The law also provides for cleanup and abatement orders, cease and desist orders, and time schedule orders. However, most violations do not require long-term corrective actions, as is contemplated by most of the other enforcement orders. In most cases, administrative civil liabilities can be levied for violations of permits or other orders, and that action results in the implementation of corrective actions to avoid the assessment of civil penalties in the future for continuing violations.

11. What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?

The threat before monetary penalties was that we would take the recalcitrant discharger to court. Given state resources, that was pretty much a hollow threat. Civil liability complaints have given the boards much more flexibility with respect to the ability to pursue timely enforcement.

Mandatory penalties provisions create problems. It removes necessary flexibility from the regional board members, and in many cases, without mandatory penalties, we would be working on higher priority enforcement cases where the penalty actions are not mandatory. However, given limited resources, we have to work on the mandatory

penalty cases, instead of higher priority non-mandatory cases. The legislative fix that was attempted with the mandatory penalties provisions was believed to be necessary because some of the regions did not pursue enough enforcement. It might have been a good fix, if all of the boards were fully funded for enforcement. With resource limitations, mandatory penalties inappropriately change the staff work priorities, from higher priority to lower priority enforcement cases.

Perchlorate Groundwater Contamination

12. Why did the State Water Resources Control Board take over jurisdiction of the challenges to your board's perchlorate cease and desist orders? What role, if any, does the regional board currently have? What role do you believe the regional board should have?

The State Board took over jurisdiction because of a legislative action. It was done at the request of this regional board. There were charges that the regional board was "biased" against the responsible parties, and that they would not be able to get due process in the regional board arena. This was done to insure that the courts would not overturn a decision based on inadequate due process.

Although the regional board members do not have a current role, regional board staff is acting as the case prosecutors for the state board hearings, and an enormous expenditure of staff resources is still being made for this prosecution effort.

I think that this division of effort, with the State Board acting as the hearing officer is an appropriate approach. The level of effort for this enormous hearing process would be impossible to be addressed by part-time volunteer regional board members.

13. What is the status of the contaminated groundwater in and around Colton, Rialto, and Norco? Has the perchlorate plume been contained or is it still expanding?

A full containment system is not yet in place. That would be the goal of the Cleanup and Abatement Orders, if the State Board adopts them. Well-head treatment systems have been installed on affected public water supply wells, and the water from the affected wells is being pumped, treated, and distributed in the public water supply systems.

Concentrated Animal Feeding operations

14. How is the board determining the scope and severity of this problem?

The scope and severity of this problem have been addressed through the board's dairy regulatory program since the early 1970's. The draft permit is the latest generation of the general dairy permit that was first issued nearly 15 years ago. The scope and severity of the problem do not seem to be at issue by the industry. The main concern is that solutions to address the waste discharges from the dairies are very expensive and difficult to implement. They typically require the use of desalting facilities to address the historic salt discharges that are currently migrating through the vadose zone and underlying groundwater. Given that the evidence reveals that dairy animals typically excrete 3-7 pounds of salt per animal per day, it is difficult to claim that there is no effect on underlying groundwater.

15. How do you believe this problem should be addressed? What timeframes would be appropriate?

The latest revision of the general dairy permit will soon be released for public review and comments. It contains requirements for meeting ground water objectives, creating pollutant offsets, preparing and implementing engineered waste management plans, etc. This continues the board 's regulatory effort with respect to dairies, and it is specifically the manner in which the problem of water quality affects from the dairies should be addressed. Appropriate timeframes are included in the draft permit. The subject timeframes allow for the generation and implementation of appropriate pollution control measures and pollutant offsets.

I hope I have responded adequately to all your questions. Please do not hesitate to have your staff contact me directly at **(949) 855-3690**, with any questions.

Sincerely,

Fred M. Ameri
Board Member
California Regional Water Quality Control Board, Santa Ana Region (8)

Statement of Goals

1. *What are your goals and objectives as a member of the Santa Ana Regional Water Quality Control Board? What do you hope to accomplish during your term? How will you measure your success?*

As a Californian first, I believe any goals and objectives I have has a member of the Santa Ana Regional Water Quality Control Board should be viewed more globally and serve to benefit our entire state. Water challenges are not just regional but affect all of us. As a professional Civil Engineer and having been in the water and wastewater industry for 25 years, I see goals and objectives being focused on continuing to ensure safe water for future generations. With the population increasing and limited new water sources available, I believe goals and objectives should include conservation and technology as two primary areas for insuring a safe water supply for the future. In the Santa Ana Region, conservation awareness is increasing and programs involving low flow showers and toilets are being taught even in classrooms now. I would like to see this broadened within the educational system.

Regarding technology, I am a proponent of technology advances such as membrane bioreactors (MBR) for the treatment of wastewater. MBR treats wastewater to nearly drinking water standards and the treated water can be used safely for irrigating landscaping areas and recreational grounds. This reclamation of water would reduce our dependence on potable water supplies for irrigation thus conserving this precious asset.

Measuring success will be relatively easy; either we will be seeing an increase in conservation and the use of technology over the next several years or not. I believe that not only we, who live in the Santa Ana Region but most of us as Californians recognize we have to be willing to conserve and look to technology advances if we going to insure our most valuable commodity – Water.

2. *What do you believe are the most serious problems facing your regional board?*

One of the significant regional problems is the use of septic tank/leachfield disposal systems in areas where subsurface soil conditions (permeable and without impermeable zones) are inappropriate for this purpose. One area is the Quail Valley, which has recently been addressed by a board-adopted basin plan amendment. I agree with Staff, that where staff resources allow, we need to address other areas, such as Lake Williams in the Big Bear Lake Basin, other areas in the San Jacinto Basin, and in the Beaumont area. We have new data indicating that pharmaceuticals and other emerging contaminants are being found in the groundwater underlying areas with widespread use of septic tanks. This is disturbing, and is becoming more and more of a matter of concern. As I indicated in question 1 above I am a proponent of technology advancements such as membrane bioreactors (MBR) for treatment of wastewater. This technology provides for the tertiary treatment (near drinking water standards) of wastewater streams at wastewater treatment plants. I desire to encourage the movement away from septic tanks/leachfield disposal systems in an effort to protect underlying aquifers.

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Total Dissolved Solids (TDS) pose the potentially greatest environmental challenge in the Santa Ana Region and currently staff reports an adverse salt balance of almost 600,000 tons per year. Without salt management (TDS controls on wastewater treatment plants, dairies and recharge operations). We now have a number of desalter facilities in the region that are beginning to address some of the salt issues. These desalters are being developed in conjunction with integrated water supply plans that incorporate water generated by desalters treating salt-contaminated ground waters. As part of the Salt Management Plan adopted by the Regional Board into the Basin Plan, we are now actively implementing salt management provisions for all discharges from point sources and non-point sources, such as dairies.

Perchlorate is, of course, also very important and has been an enormous staff resource drain. This is a subject that will be a matter of significant concern for the regional board and staff for the foreseeable future.

State and Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, particularly considering these are part-time positions.

3. *Do the state board and your regional board staff assist you to better understand some of the complex issues before you if you request help? If not, where do you seek help when you need it? Do you have any suggestions on how the state water board's staff might better assist you?*

My educational and professional background is one of Civil Engineering (Degree in Civil Engineering and a Professional Civil Engineer in multiple states) with a focus on water and wastewater and I am able to understand complex technical issues brought before the Board. I do believe Staff tends to spend considerable time in presentations to the Board to explain complex issues to the non-technical Board Members. I believe this is necessary to help members of the Board to better understand the issues and to help make informed decisions when difficult or complex matters are brought before the Board.

4. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

As part of my appointment process I was required to attend a mandatory briefing by the Regional Board attorney. This briefing was several hours in length and specific regarding potential conflicts of interest. As a professional engineer and member of the American Society of Civil Engineers (ASCE), I am expected to act in a professional manner and to avoid conflicts of interest as part of my profession. I carry this training with me into the Regional Water Quality Control Board position and will withdraw from voting where there is a potential of a

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conflict. Additionally, I also plan to bring up any remote potential of conflict with the Regional Board attorney in advance to seek any comment insuring accountability.

5. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?*

Being newly appointed I have not had a lot of opportunity to experience the state board-regional board relationships, other than the appearance of a state board member at regional board meetings. The interaction seems to be good between the State Board Member and the Regional Board.

6. *How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?*

I am still learning about the current funding status of our Regional Board. Staff has told us as a Board that an analysis by the Legislative Analyst found that less than half of the responsibilities carried out by all the regional boards are funded and that our own staff has to make choices between all of our responsibilities. There are instances when some matters simply cannot be addressed. Some of the areas of concern include areas such as Total Maximum Daily Loads (TMDLs), Basin Planning and even Enforcement. TDS (the salt management plan) was funded by stakeholders who believed they could not wait for funding. Another area involves waste discharge permit holders and the NPDES program.

Cleaning Up Polluted Waters

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal storm water permit programs and Total Maximum Daily Load (TMDL) programs, which are required under the Federal Clean Water Act to improve water quality by limiting the amount of pollutants allowed into water bodies.

Currently, regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

7. *Please describe the status of your board's TMDL process. Does your board have adequate resources to develop and implement the required TMDLs?*

As a new Board Member I am not completely knowledgeable on our TMDL status. I have sat through an extensive Board meeting where Staff, outside Consultants, Regional Stakeholders and the EPA presented reports. I do know we are currently not meeting all of the milestones and believe one of the primary reasons relates to making a decision based on sound engineering and science principals. It is important to get an appropriate TMDL plan approved

and although there seems to be a considerable frustration, all of the Parties are working to achieve this.

8. *How will the board monitor and enforce the TMDLs it has or will adopt?*

I do agree with Staff that one of the most important steps in monitoring and enforcing TMDLs is insuring the TMDL provisions are in both waste discharge requirements (WDRs) and in updates of the basin plan.

Enforcement of Water Quality Laws

Two years ago the office of the secretary of Cal-EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards were among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never sought criminal penalties for serious violations, and generally did not aggressively pursue violators.

9. *What enforcement options do you believe provide the most effective tools for violations of board orders?*

I believe administrative civil liabilities (ACL) are the most effective of the board's enforcement tools. In our last Board meeting the Board affirmed one issued by the Executive Officer. I agree with Staff that in most cases, ACLs can be levied for violations of permits or other orders, and that action results in the implementation of corrective actions to avoid the assessment of civil penalties in the future for continuing violations.

10. *What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?*

Since implementation, mandatory fines have caused dischargers to take notice and it has encouraged compliance but not in all cases. Mandatory fines can remove flexibility from the regional board members, and this can lead to dealing with matters of less priority than others where the penalty actions may not be mandatory. It seems to me that with limited Enforcement funding that we are forced to deal with mandatory fines. It is not a perfect world.

Perchlorate Groundwater Contamination

Since 2002 the Santa Ana board has been conducting an investigation of groundwater contamination in the city of Rialto. The focus of the investigation has been a 160-acre site that has been home to numerous manufacturing companies that used perchlorate in their manufacturing processes since the 1950s. Perchlorate has contaminated the municipal water wells of the cities of Colton, Rialto, and Norco.

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In addition, there are problems related to perchlorate levels found in Colorado River water that is imported to Orange County. This drinking water contains approximately 4-8 parts per billion (ppb) of perchlorate—the current public health goal is 6 ppb. Some water districts blend non-perchlorate contaminated water with Colorado River water to reduce the perchlorate levels below the public health goal.

In 2005 the board issued a cease and desist order to various parties, which required actions including investigation, water replacement, and remediation. Because of challenges to the cease and desist order, the State Water Resources Control Board has taken over the issue and will hold a hearing this July.

11. *Why did the State Water Resources Control Board take over jurisdiction of the challenges to your board's cease and desist orders? What role, if any, does the regional board currently have? What role do you believe the regional board should have?*

I do not have the historical background as a new appointee to answer the first part of the question. As I learn of the current status I do believe that having the State Board serve as the hearing officer is an appropriate approach as the State Board has more resources than our own regional board.

12. *What is the status of the contaminated groundwater in and around Colton, Rialto, and Norco? Has the perchlorate plume been contained or is it still expanding?*

I am aware that full containment has not been achieved and that well head treatment has been implemented to appropriately treat public water systems prior to the water entering potable supplies.

Concentrated Animal Feeding Operations

There are approximately 178 dairy-related confined animal feeding operations in the Santa Ana region that contain about 255,000 animals. These operations are subject to National Pollution Discharge Elimination System permitting requirements. The board has decided to issue general waste discharge requirements for all confined feeding operations and held a public workshop on the issue at its February, 2007, hearing.

13. *How is the board determining the scope and severity of this problem?*

The dairy problems have been well known since the 1970's. I believe it has been through the Regional Board's efforts that the industry has either moved toward compliance or moved elsewhere. We have a draft permit which is the latest generation of the general dairy permit that was first issued nearly 15 years ago. The primary concern has been the TDS load into the underlying aquifers. In the past dairies disputed the impact but there can be little argument over the impact of each cow depositing 3 to 7 pounds of salt into the underlying soil matrix and eventually reaching an aquifer. With the cost of desalination being where it is and the

competitive market for milk producers; it appears more economical to relocate that it is to implement a treatment system.

14. *How do you believe this problem should be addressed? What timeframes would be appropriate?*

I believe the latest revision of the general dairy permit has the necessary requirements for addressing on-going dairy businesses. The board's regulatory program will continue to include inspection and enforcement. I know there are timeframes included in the draft permit that allow for time to comply with appropriate treatment implementation.

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Statement of Goals

1. **What are your goals and objectives as a member of the Santa Ana Regional Water Quality Control Board? What do you hope to accomplish during your term? How will you measure success?**

The region encompassed by the Santa Ana Regional Water Quality Control Board – San Bernardino, Riverside and Orange Counties are experiencing some of the most rapid growth in the State of California. In spite of this growth and an expanded workload we have managed to keep ahead on our water quality protection efforts. As growth in the region will continue one of my goals would be to continue with these levels, and in spite of the current funding levels continue with our percentage improvements in various areas.

Another goal, and one that has consumed tremendous Board and staff resources would be to ensure that the responsible parties are held accountable for the perchlorate contamination in the Rialto-Colton basins. Additionally I would continue to purse that the adverse water quality effects for the use of septic tank/leachfield systems in areas unacceptable for such uses be addressed.

2. **What have been your most significant accomplishments as a member of the Santa Ana Regional Water Quality Control Board?**

I believe that one of the significant accomplishments for our Board is the sense of teamwork on our projects which helped us to arrive at what I believe are good and concise decisions. Although this may not appear to be an "accomplishment", when one considers that at times we have operated without the benefit of a full quorum and with a staff that is stretched on our many issues, I believe that teamwork is a significant accomplishment. In regard to more tangible accomplishments I would point to the Salt Management Plan adopted by the Regional Board into the Basin Plan. We are now actively implementing salt management provisions for all discharges from point sources and non-point sources, such as dairies. Salt management activities include regulation of the recharge of imported water sources, such as from the Colorado River and the State Water Project.

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3. What do you believe are the most serious problems facing your regional board.

One significant problem facing all Regional boards, and a problem felt dramatically in the Santa Ana Region due to our tremendous growth, is that Regional Boards are funded for less than 50% of our responsibilities. This has tremendous implications when one considers the many mandates we face. This also has an impact on Perchlorate which is, of course, very important and has been an enormous staff resource drain. This is a subject that will be a matter of significant concern for the Regional Board and staff for the foreseeable future. Another area of concern is that we have new data indicating that Pharmaceuticals – those used for both human as well as animal, and other emerging contaminants are being found in the groundwater underlying areas with widespread use of septic tanks. This is disturbing, and with the population boom experienced in our region is taking on a more crucial role in our activities.

State and Regional Board Roles

4. Do the state board and your regional board staff assist you to better understand some of the complex issues before you if you request help? If not, where do you seek help when you need it? Do you have any suggestions on how the state water board's staff might better assist you?

Regional Board staff is very good at making detailed presentations on some of the more complex scientific and water quality matters which come before the Board. Although at times the public may consider these presentations a bit too detailed, they serve to educate the Board and any attending public on the matters before the Board helping us to understand some of the more complex matters. Additionally they serve to provide a record of the Board proceedings.

If I do need additional help I will generally seek the advice of the Executive Officer.

In regard to State Water Board staff providing more assistance I do realize that State Board staff has very limited time and resources. In most instances there is usually a Regional Board staff member who is the liaison, and the State Board Office of the Chief Counsel has been extremely helpful to the Santa Ana Regional Board in providing legal assistance where warranted. In light of the limited resources the only suggestion I can make at this time would be to continue to provide the Regional Boards with timely and concise information on the matters facing the State of California as a whole.

5. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on you board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to the board?

- I participated in AB 1234 Ethics training in September 2006.
- Briefing by Regional Board attorney and Executive Officer upon appointment of new board members

- On line training by California Attorney General concerning conflicts of interest.

- Training at the Water Quality Coordinating Committee by the SWRCB Chief Counsel.

- As I am also a Councilmember in the City of Montclair I diligently review both Regional Board and City of Montclair Agendas for any perceived or real conflicts of interest – in both cases consulting with Regional Board and City staff respectively. By consulting with both Regional Board and City staff I am made aware of any circumstances which may require me to withdraw from a vote. During my term on the Board I believe I recused myself on only one vote – a matter regarding an NPDES permit where the City of Montclair was a permittee.

6. What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?

During my term on the Board I have noted that most coordination has come through the Regional Chairs meetings and the WQCC meetings. I have also observed that with Nine Regional Boards throughout the State of California, there are generally nine perspectives and that those perspectives do not always coincide with the State Board. This is a given. As each Board is designed to represent a specific region, the regional rather than State perspective will be taken by the Regional Board member. I do appreciate having a State Board member attending our meetings and helping to improve the communication between the State and the Region. Her updates from the State and willingness to answer questions makes a positive difference in my understanding of State issues.

As I stated previously I believe the WQCC meetings have been a valuable way to reach an understanding on those Regional perspectives as well as the statewide perspective.

Although coordination and accountability could be improved it would take time and resources – all of which are limited at present. If there was an area for improvement I would suggest a better coordination in establishing and implementing rationale for resource distribution between the state board and the regions. There are times when that process could use more transparency, or at least, clarity.

7. **How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?**

As with many public entities funding is always of key concern. It is my understanding from the L.A.O. that Regional Boards are only funded for no more than 50% of what is necessary to perform all Board mandates and responsibilities. That very situation creates an environment where choices and priorities must be made, and in some cases a mandate or responsibility may not be addressed.

In regard to issues which may receive less attention than they need due to funding levels; yes there are things that we should be doing and cannot due to inadequate funding. This has created an environment where we as a Regional Board must be creative on certain priorities. For instance in the Regional Salt Management Plan the region stakeholders could not wait for state funding and therefore funded the program themselves.

In other situations the Board is behind due to funding levels. TMDL's for example take staff resources to analyze and collect the necessary data, due to funding constraints the Board can fall behind in this mandate. Other areas which receive less attention than they should, due to funding constraints, include: oversight of NPDES and waste discharge permit holders, oversight and prosecution of ground water contamination due to volatile organics (solvents), development and implementation of non-point source programs, and addressing other perchlorate issues other than those in Rialto.

Cleaning Up Polluted Waters

8. Please describe the status of your board's TMDL process. Does your board have adequate resources to develop and implement the required TMDLs?

TMDLs will be coming to the board for final consideration, both later this year and next year. There are no easy TMDLs left for the board to consider. The TMDLs being proposed are complicated and very costly.

Unfortunately the TMDL schedule is not being met in every situation due to the process of developing a TMDL. The TMDL process requires the use of sound science and empirical evidence. This takes time and money. The implementation of a TMDL is quite costly. The Regional Board Staff has taken a position backed up by the Regional Board that it is better to incur a delay than to suggest a TMDL which is not based on sound science and empirical evidence. Unfortunately there are not adequate resources to develop and implement the required TMDLs. Besides needing significantly more staff to work on these matters, funding is also needed to generate the sound science on which to base TMDL decisions and properly serve the public.

9. How will the board monitor and enforce the TMDLs it has or will adopt?

The most important steps in monitoring, implementing and enforcing TMDLs is to include the TMDL provisions in both waste discharge requirements and in the updates of the water quality control plans (basin plans). In the Santa Ana region, TMDL requirements have been included in specific individual waste discharge permits, general waste discharge permits and in basin plan provisions.

Also, other agencies have a responsibility to do their share with respect to the implementation of TMDLs. This is why TMDL provisions have been included in the area-wide storm water permits, which are the responsibility of county and municipal entities to implement. We ensure that they meet this responsibility by enforcing the permit conditions.

Enforcement of Water Quality Laws

10. What enforcement options do you believe provide the most effective tools for violations of board orders?

It seems that administrative civil liabilities(ACL's) are the most effective of the board's enforcement tools. ACL's can be issued by the Executive Officer, and if they are resolved, there is no need to hold a board hearing. This allows a matter to be handled efficiently, without having to wait for the next scheduled regional board meeting. If the matter is not resolved, then the ACL is brought to the regional board for consideration. The law also provides for cleanup and abatement orders, cease and desist orders, and time schedule orders. However, most violations do not require long-term corrective actions, as is contemplated by most of the other enforcement orders. In most cases, administrative civil liabilities can be levied for violations of permits or other orders, and that action results in the implementation of corrective actions to avoid the assessment of civil penalties in the future for continuing violations.

11. What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?

Although monetary penalties do help with compliance and Civil liability complaints have given the boards much more flexibility with respect to the ability to pursue timely enforcement, fines and penalties are not appropriate in all cases. In some of these cases mandatory penalties removes the flexibility from the Regional Board, hindering the ability to deal with higher priority enforcement cases. Given the limited resources, mandatory penalties inappropriately change the staff work priorities from higher priority to lower priority enforcement cases. Nonetheless given very limited resources the Board works on the mandatory penalty cases.

Perchlorate Groundwater Contamination

12. Why did the State Water Resources Control Board take over jurisdiction of the challenges to your board's perchlorate cease and desist orders? What role, if any, does the regional board currently have? What role do you believe the regional board should have?

In regard to Perchlorate the Santa Ana Regional Water Quality Control Board has not so much been an investigation but rather seeking enforcement focusing on bringing the responsible parties to justice. The SARWQCB requested that the State Board take over jurisdiction due to what I believe were unfounded charges that the regional board was "biased" against the responsible parties, and that they would not be able to get due process in the regional board arena. In that light the request by the SARWQCB for the State Board to take over jurisdiction was done to insure that the courts would not overturn a decision based on inadequate due process.

The current role of the Regional Board is at present that Board staff members are acting as the case prosecutors for the state Board hearings. This is an enormous expenditure of staff resources being made for the prosecution of this effort. I believe that this approach with the State Board acting as the hearing officer is an appropriate approach. The level of effort for this dramatic hearing process would be impossible to be addressed by a part-time, volunteer Regional Board Members

13. What is the status of the contaminated groundwater in and around Colton, Rialto, and Norco? Has the perchlorate plume been contained or is it still expanding?

A full containment system is not yet in place. A full containment system is the goal of the Cleanup and Abatement Orders, if they are adopted by the State Board. Well-head treatment systems have been installed on affected public water supply wells, and the water from the affected wells is being pumped, treated, and distributed in the public water supply systems.

Concentrated Animal Feeding operations

14. How is the board determining the scope and severity of this problem?

Since the early 1970's the Board has had a dairy regulatory program to address the scope and severity of this situation. The draft permit is the latest generation of the general dairy permit that was first issued nearly 15 years ago. The scope and severity of the problem do not seem to be at issue by the industry. The main concern is that solutions to address the waste discharges from the dairies are very expensive and difficult to implement. They typically require the use of desalting facilities to address the historic salt discharges.

15. How do you believe this problem should be addressed? What timeframes would be appropriate?

The latest revision of the general dairy permit will be released for public review and comments. It contains requirements for meeting ground water objectives, creating pollutant offsets, preparing and implementing engineered waste management plans, etc. This continues the board's regulatory effort with respect to dairies, and it is specifically the manner in which the problem of water quality affects from the dairies should be addressed. Appropriate timeframes are included in the draft permit. The subject timeframes allow for the generation and implementation of appropriate pollution control measures and pollutant offsets.

July 8, 2007

Senator Don Perata, Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Dear Senator Perata,

In response to your letter of June 27, 2007 requesting my responses to your questions for my confirmation as a member of the Santa Ana Regional Water Quality Board I am providing the following responses. Thank you for allowing me to do my confirmation by correspondence.

Updated Form 700: I am enclosing a copy of the updated Form 700 that I filed on March 2, 2007. There is only one minor change in the sale of the Toledo Edison Stock.

Statement of Goals

1. My goal as a regional water board member is to use my scientific expertise and approach to help other members of the board and staff understand the many complicated water quality problems that come before the board. This is especially important for the Inland Empire that is expanding at a very rapid rate as we try to maintain water quality.
2. My most significant accomplishment as a member of the regional water board is to improve the efficiency and substance of our actions in dealing with many very difficult problems.
3. Some of our most serious problems in the Santa Ana Region are (a) salt balance management as we add almost 600,000 tons of salt from waste water treatment plants, dairies and water recharge operations, (b) septic tank/leach field disposal systems in many of our shallow granite soils especially in the Perris/Quail Valley area, (c) perchlorate groundwater contamination in the Colton, Fontana Rialto areas which stems from old rocket fuel manufacturing sites.

State and Regional Board Roles

4. Our regional board Executive Officer along with his staff is especially helpful in explaining the complex issues that we must deal with in solving water quality problems. These often take the form of workshops at our board meetings. The Office of the Chief Counsel is most helpful in providing legal assistance. Our main connection to the State Board is our liaison person who brings information about the State Board issues and problems. Unfortunately there are not enough resources to provide additional assistance.
5. Our Regional Board attorney and Executive Officer provide some in depth training to new appointees and to other board members when they request help. We have to take on-line training from the California Attorney Generals Office every two years. Annually at our SWRCB Water Quality Coordinating Committee the Chief Counsel provides updates

Senate Rules Committee
JUL 1 : 2007
Appointments

and changes in the conflict of interest issues. I personally have never had to withdraw from voting on an issue.
6. Coordination and accountability between the state and regional boards could always be improved however there are never enough resources and time to carry out the additional steps needed for major improvements. Currently, our major coordination comes through the Chairs meetings. There are nine regions and each has its own set of special issues that must be dealt with at the local level. Major water quality issues will always be decided by the State Board appeals because Industry and Environmental groups will never be fully satisfied by regional board actions. We try to apply the best science solutions to the issues and let the politics fall to the State Board.
7. There are never enough resources to deal with all the enforcement of the state and federal laws. The State Board sets it priorities and the Regional Boards sets it priorities to deal with its own special issues. Some matters particularly the less significant mandatory penalty complaints cannot be addressed within our current level of funding. For example in Region 8 we have been forced to spend more time and money on the perchlorate enforcement problem because of California's legal appeals system which has stretched out any enforcement action for the last 3 years.

Cleaning Up Polluted Waters
8. TMDLs based on good science are complicated and very costly. Consequently, there are not enough resources to implement sound TMDLs so delays are necessary rather than suggesting some poorly scientific-supported TMDLs.
9. Our Regional Board along with other agencies such as the county and municipal entities have the responsibility to do their share with the respect to implementation of TMDLs. This is why TMDL provisions are included in the area wide storm water permits and updates in the basin plans.

Enforcement of Water Quality Laws
10. The most effective tools that Region Boards have for enforcement are administrative civil liabilities that can be issued by the Executive Officer and are often resolved without board action.
11. Fines and penalties are important in terms of compliance with the Porter-Cologne Water Quality Control Act but are not appropriate in all cases. Mandatory penalties remove some of the flexibility from the regional board members to take the appropriate action to fit the special local situation.

Perchlorate Groundwater Contamination
12. The perchlorate ground water contamination in the Rialto area has been under investigation since 2002 but because of the legal wars perpetuated by the suspected responsible parties we have never been able to serve Cleanup and Abatement Orders. The State Water Resources Control Board took jurisdiction because we asked them to do it to ensure that the courts would not overturn a decision based on inadequate due process. The regional board members do not have a role in this case but the regional board staff is providing information for the state board hearings.
13. A full containment is not possible at this time without additional resources from the responsible parties. Well-head treatment is in place on the contaminated wells and water

from these wells is then distributed in the public water supply below current state perchlorate levels.

Concentrated Animal Feeding Operations

14. The regional board has been dealing with this problem since the early 1970's. Our main concern is that solutions to address the waste discharges from the dairies are very expensive and difficult to implement especially when we are trying to maintain and impliment a regional salt balance management plan in the region. There is one desalter in the area and probably another is needed to ensure there is no further degradation in the quality of the ground water.

15. A revision of the general dairy permit with appropriate timeframes will soon be released for public review and comment. This will constitute the board's regulatory effort with respect to dairies to improve water quality.

Respectively submitted,

Seymour D. Van Gundy
Member of Santa Ana Regional Water Quality Board.

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1:35 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR ROY ASHBURN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ALEX PADILLA

MEMBER ABSENT

SENATOR ROBERT DUTTON

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Appointments Consultant

BILL BAILEY, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

JOHN F. MONDAY, Executive Officer
Board of Parole Hearings

ARTHUR G. BAGGETT, JR., Member
State Water Resources Control Board

SENATOR DENISE DUCHENY

FRANCES SPIVY-WEBER, Member
State Water Resources Control Board

SENATOR ALAN LOWENTHAL

GEOFFREY McQUILKEN, Executive Director
Mono Lake Committee

CHARLOTTE HADDE
Planning and Conservation League

KATHLEEN COLE
Metropolitan Water District of Southern California

ALLAN LIND
Central Basin Municipal Water District

TIM CARMICHAEL
Coalition for Clean Air

ED MANNING, Former Chair
Mono Lake Committee

RANDELE KANOUSE
East Bay Municipal Utility District

JAMES D. BOYD, Member
State Energy Resources Conservation and Development Commission

KASSANDRA GOUGH
Calpine

JOHN BOESEL
CALSTART

JOSEPH LYONS
California Manfacturers and Technology Association

JAIME S. FALL, Deputy Secretary
Labor and Workforce Development Agency

BRUCE STENSLIE
California Workforce Association

CESAR DIAZ
State Building Trades Council, AFL-CIO

JEREMY SMITH
California Labor Federation

SALLY M. McKEAG, Member
Public Employment Relations Board

STEVE KEIL
California State Association of Counties

DAVID F. THORMAN
State Architect

LEE ADLER
Structural Engineers Association of California

RICHARD SKAFF, Executive Director
Designing Accessible Communities

TOM DUFFY
Coalition for Adequate School Housing

KURT COOKNICK
The American Institute of Architects, California Council
California Building Industry Association

MATTHEW WHEELER
California Building Officials

ERNEST SILVA
Association of California Construction Managers

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Written Responses to Committee Questions By Appointees, as well as Written Statements by Appointees Not Required to Appear: Members of the State Bar Board of Governors: LAURA N. CHICK and WILLIAM H. GAILEY; EDDIE LANG, JR., Member, Contractors' State License Board; JUDITH N. FRANK, Member, California Health Facilities Financing Authority; JOHN M. MASS, Member, California State Lottery Commission; Members of the California Regional Water Quality Control Board: MAURICE E. MARTINEZ and RICHARD W. POST, Colorado River Basin Region; JOHN M. DUNKER, North Coastal Region; and ELIZABETH P. SCHNEIDER, San Diego Region; DAVID NAWI, Member, State Board of Forestry and Fire Protection

P-R-O-C-E-E-D-I-N-G-S

--oOOoo--

CHAIRMAN PERATA: Item Two is John Monday, the Executive Officer for the Board of Parole Hearings, who is up for vote only.

Thank you. Glad to have you back, and I have just a few questions.

We talked about psychological evaluations for lifers, and the fact that about a third of the lifer hearings were postponed last year.

What is the policy on how often these evaluations will be conducted?

MR. MONDAY: Senator, thank you for having me back, Committee Members.

We did do some in-depth discussion of that, both in policy discussion within CDCR and the Governor's Office, as well as with members of your staff, Senator.

The current policy is going to be -- or the ongoing policy will be that all lifer inmates will get what we call the new psych eval process, which includes static factors, psychological evaluation and risk assessments attached to that, validated risk assessment instruments. We talked about that to some degree at the last hearing.

Our goal is to give that to every lifer inmate current and those that come forward with their initial hearings. That's somewhat of a large hill to surmount, but that's our plan to do.

In the intervening period of time, we've made a

determination that -- and these were questions that were raised by this Committee and staff -- that any psych eval that exists in the files currently that is older than three years old will not pass muster heretofore. Those that may be three years old and earlier will only pass muster if the senior psychologist of the unit reviewed that psych eval and find that it meets current psychological standards, and then they could co-sign that as the senior psychologist. It's kind of a bridging process, Senator, to get us through the massive number that we have to do. Those individuals would still, as soon as we could, get the new psych eval as well.

In a nut shell, that's the plan. We are kind of pulling out all the stops to get the resources we need to accomplish that goal.

CHAIRMAN PERATA: Is there somebody too old for that evaluation?

MR. MONDAY: I beg your pardon?

CHAIRMAN PERATA: Is there someone that would be too -- I'm not asking for myself.

[Laughter.]

CHAIRMAN PERATA: Is there anybody that would be too old?

MR. MONDAY: What I meant too old, I meant the psych eval itself being older than three years old.

CHAIRMAN PERATA: But an old lifer?

MR. MONDAY: No, we aren't disqualifying anyone, sir.

SENATOR ASHBURN: Just for clarification, you're

talking about the length of time that the evaluation had been done before it's presented?

MR. MONDAY: That's correct.

SENATOR ASHBURN: Not the inmate but the document.

CHAIRMAN PERATA: The inmate has to be older than three years; right?

MR. MONDAY: Yes.

CHAIRMAN PERATA: Leland Yee is a child psychologist. He works in our building.

MR. MONDAY: We're scratching every place to find resources.

CHAIRMAN PERATA: You can get him out of my hair.

[Laughter.]

CHAIRMAN PERATA: We're just kidding.

With regard to the parole revocation hearings, are you guys working well together, you and CDCR?

MR. MONDAY: Yes, sir, we are. As we talked --

CHAIRMAN PERATA: Stupid question to ask publicly; isn't it? No, sir, it's really bad.

[Laughter.]

MR. MONDAY: We've been engaged together even before the last hearing. The Valdivia lawsuit compelled a lot of things to be looked at differently. And indeed, as you and I talked last time about your district, as you had certainly specific concerns, but they cross all boundaries in California. We are looking at all of these hearings, looking at alternative sanctions.

In the last quarter, we were just measured with what's called COMPSTAT. In the 26,000 hearings that came before us in that quarter, over 20 percent -- I almost said 25 -- over 20 percent of those we, the board, alternatively disposed of those in another manner.

Mr. Hoffman in CDCR Paroles, they have kind of the first review, and they alternatively sanctioned a significant other amount of the cases that would have come forward.

So, I think that process is maturing, and then AB 900, as we're looking at other alternatives in AB 900, they go hand-in-hand.

CHAIRMAN PERATA: Any further questions?

Well, once again, I just wanted to reiterate that we were impressed before with your willingness to do the work that's at hand. You've carried the burden that you don't have a board that has a great reputation for efficiency or even fairness, frankly. So, we really hope that you're able to provide the administrative leadership.

I think most of this really pivots off of the administrator and how determined he or she is for success. You've cited it before, and I'll say it again, that you can use Oakland, or Richmond, both of which are in my district, as sort of prototypes of what's going wrong, and perhaps how it can be remedied.

And I just want to say, we're ready to serve you and be responsive to you in any way that we can.

With that, I'd like you to call the roll, please.

SECRETARY WEBB: Padilla.

SENATOR PADILLA: Aye.

SECRETARY WEBB: Padilla Aye. Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Three to zero.

CHAIRMAN PERATA: Three-zero, we'll leave the roll open.

Thank you, Mr. Monday. We appreciate it.

MR. MONDAY: Thank you, Senator, very much.

[Thereafter, SENATOR CEDILLO voted Aye, making the final vote 4-0 for confirmation.]

CHAIRMAN PERATA: We have a number of diverse appointees appearing here today selected, as we like to do, at random with no particular purpose in mind.

Speaking of which, Art, would you come forward, and Ms. Spivy-Weber.

Denise, are you going to play favorites? Are you going to choose one over another?

SENATOR DUCHENY: Who's the other one?

CHAIRMAN PERATA: Alan, come up. We have to have a pair in here.

SENATOR DUCHENY: I know him; I don't know her.

CHAIRMAN PERATA: Another psychologist. This is why things work so well here.

SENATOR LOWENTHAL: A want-to-be psychologist up

there.

CHAIRMAN PERATA: That's right.

Ms. Ducheny.

SENATOR DUCHENY: Thank you very much, Mr. Chairman and Members.

I'm here today just to recommend to you and the privilege to present to you somebody who has been serving us now for more than two terms. He's all ready in the third term, which we're about to try to confirm, we hope, today on the State Water Resources Control Board.

I met Art just about, I think, around the time he actually got on the Water Resources Control Board or shortly before that. He has been a true asset on that Board.

He is part of the continuity. You do have a lot of new members on that Board, and I think it's important that we continue to have people who now have experience with it, who have been working very hard to try to straighten out a very difficult system that I know you, Mr. Chairman, and others of us have tried to figure out how to make this system more rational.

I think somebody with the experience that Art has, both having been, you know, a locally elected person, having worked in architecture and other fields before he became an attorney, and now holds the attorney position on the Board and has for these several years, brings a lot of experience to helping us figure out how to make that system more streamlined, make it work better for the public, make it work better for us.

And during his tenure on the Board, we have seen major changes just in the bureaucracy of that Board. It has

become a much more diverse organization. They figured out what some people, folks, that having women run the place makes it run better. And both Celeste, who was there for some years, and now their current Executive Director are women who have shown themselves to be, you know, most helpful to this organization and to all of us in the state, and have been great executives running the State Water Resources Control Board, one of our most important bodies now, as we struggle with TMDLs, and we struggle with permitting and water quality issues throughout the state.

And I hope that this Committee can confirm Mr. Baggett for a third term because we need his ongoing expertise.

CHAIRMAN PERATA: Thank you.

Mr. Lowenthal.

SENATOR LOWENTHAL: I, too, am very pleased to introduce and to support Fran Spivy-Weber. Fran has been the public member of the State Water Resources Control Board since March of 2007, but I've known Fran for over ten years now. She was the Executive Director of the Mono Lake Committee. She's worked on numerous state and regional water advisory groups.

I always saw her as a person of great integrity, a person who really tries to find consensus, who is a problem solver, who is really aware of the issues of the Bay-Delta, statewide issues in terms of water conservation, promoting integrated regional water management programs, dealing with water reclamation.

I think that she's already demonstrated her leadership. I think she'd be a great addition to the

continuation on the State Water Resources Board.

CHAIRMAN PERATA: Thank you, sir.

Now, one of you can move forward or one of you can move backward, but we'll put you on the same plane.

Thank you both and welcome. Who would like to go first?

MS. SPIVY-WEBER: Alphabetical? I'm senior in age.

MR. BAGGETT: Chair Perata and Members, it's my honor to have the opportunity to appear before you today. It's also been my privilege to have spent the last eight years as a member of the State Water Board, working for the citizens of our state.

I realize there is still much to be done at the Board and with the waters of the state, but look forward to the opportunity to continue to work with the Governor, with the Legislature, with the various stakeholders, and my colleagues towards furthering the Board's mission, which is to protect, preserve, and restore our state's waters.

With that, I'll be glad to answer any questions.

CHAIRMAN PERATA: A veteran.

MS. SPIVY-WEBER: I was told to be very short. I will be.

CHAIRMAN PERATA: Lots of people are, but many aren't.

Congratulations.

[Laughter.]

MS. SPIVY-WEBER: My name is Frances Spivy-Weber. I am -- I have been on the Board since March first.

My specialty in coming to the Board was not so much water quality but water supply. And as I worked in the water supply issues in my role as Executive Director of the Mono Lake Committee, I realized the incredibly important role that water quality plays in ensuring future water supplies.

And so, one of the issues that I am -- hope that I will be able to achieve at the Board is better integration between the issues of water quality and water supply, so that we get more of both.

And with that, I will close and look forward to your questions. And any of the hard ones, I'll just give to Art.

CHAIRMAN PERATA: Good. You've learned a lot in short period of time.

[Laughter.]

CHAIRMAN PERATA: I want to say at the threshold, your appointments, your first year, do not expire until January.

However, there has been, amid all the many things that the Governor's Office has been trying to make priorities, water has emerged as -- I don't know if it's this year's top item or next, but somewhere, One or One-A.

But we in the Legislature not only endorse the primacy of the issue, but probably are far more aggressive on what we have and are expecting to get done.

So, your ability to hear from us today will help

you, I think, shape what's going to go on in the fall. And what goes on in the fall will have a lot to do with what we're going to be trying to accomplish legislatively next year.

We can talk all we want about more overground storage, or conveyance, or these things, but if the administration of water policy is not as it should be, then a lot of what we do is just howling at the wind, and we do enough of that. We don't need to do it unintentionally.

So with that, I'd like to ask Senator Padilla if he'd like to open with some questions.

SENATOR PADILLA: Thank you, Mr. President.

First of all, let me start sort of from my district and work outwards to some statewide issues.

My district, as both of you know, I'm sure, is the San Fernando Valley basically. Earlier this year, the Department of Water and Power announced that it was finding contamination in its wells in the San Fernando Valley.

And not to be parochial because it's my district, but the wells in the Valley constitute 85 percent of Los Angeles' groundwater supply, and in dry years can account for up to 30 percent of the city's overall water supply. So, it's clearly an important issue and critical from a water supply and a health standpoint.

So, I'd like to begin by asking what the role of the Board has been in ensuring that aquifers in the Valley and others like it throughout the state, how you're protecting them? What you feel your level of your responsibility is in ensuring that they're safe for the people?

MS. SPIVY-WEBER: I will start on this one, although it is a hard question.

I live in Southern California. So, and I know the San Fernando Valley quite well. I live further south, but I do know about this issue.

And the Water Board has been engaged primarily through the L.A. Regional Board, working with EPA, with a number of the cities there, not only Los Angeles, City of Los Angeles, but also Glendale and the other cities that are being threatened by the same problem.

In my briefing from them, I was assured that drinking water, that the contamination is at a level that it -- that the drinking water at this point is definitely not threatened, but they are in high gear, as you I think know, to -- to get treat -- to get wells in there that can basically stop the flow of the contaminants as they move down so that -- so that the wells -- the wells downstream of the contamination will be -- will not be damaged.

In addition, though, they are looking broader in the whole area, not just where the contamination is right now, but where there could be future problems. And they're using this as an opportunity to make sure that as they put in wells to both monitor and to clean up the contamination, that they're taking in a much bigger area than just the area that's contaminated now.

And I think the biggest issue is who's going to pay and where, and in some places they've found people who actually will pay agencies that -- it's Super Fund sites, so

there are some where agencies will pay. Some of the cities are stepping up; I know Glendale is, and certainly the City of Los Angeles.

So, while I don't want to be Pollyannish about it, I think it's extremely serious and we've got to watch very carefully, I'm pleased that the Water Board is a full partner in that.

SENATOR PADILLA: Do you care to add anything?

MR. BAGGETT: There's not much to add, other than, you know, I'm pleased that Region Four, the L.A. Regional Board, has taken initiative in putting together stakeholder groups. I think, as you know, have been meeting on a regular basis with all the parties to try to resolve this as quickly as possible and avoid, with any Super Fund site, litigation, litigation, and more litigation.

SENATOR PADILLA: And while you say you're happy that there are some entities that are coming forward, willing to offer resources for clean-up, that only doubles my frustration, to be honest with you, because whether it's a city like Los Angeles, Burbank, Glendale, or federal dollars to do Super Fund programs, it's the people's dollars really, because those are taxpayer dollars going to clean up a mess that was, in most cases, caused by private entities, individuals, corporations.

So, the first follow-up question is, how did we shift from having to have conversations about what we're going to do to clean up a site to how to we prevent contamination to begin with? That's, in my opinion, the more efficient way to approach it as a board.

MS. SPIVY-WEBER: Well, in terms of people who are paying, it's not just the public dollars; although, you're quite correct. Some public dollars will go in.

But they have identified some corporate and eight entities that will also pay in some portions of that area, and they're looking for the others.

I think the -- we have to have policies and procedures that are pollution prevention activities. And whether it be in the way we construct or the way we carry out our work.

I think we also have to have a diverse source of water supply for that area and for -- for the State of California, so that when there is a problem unanticipated, certainly unwanted, that we have a way of making sure that the industries, the people in those areas, can -- can work together.

So, the integrated regional water management planning that that area is engaged in right now with the county, I think, is critical to addressing your concern, which is: Let's stop this before it happens; let's do it right. And we're going to have to do it in a coordinated way with each other.

MR. BAGGETT: I think a second part, one of the -- I guess if there was positive outgrowth of the MTBE pollution problems we've had throughout the state, it was I think the leadership, that the bill originated in this body which created a $50 million fund to do groundwater monitoring. And our GAMA, groundwater monitoring program, the good news is now when we get some perchlorate or some type of contaminant, because of this monitoring system we've set up, we can identify

it quickly, which we didn't have in the MTBE days.

So, we at least, I think, at the water boards, are putting together a strong program to identify and quickly try to at least anticipate who the responsible parties are. And then, as you know, once it goes to court and goes to a Super Fund site, it's a little challenging to all of us. But at least the good news is, we can now identify it and stop any further action using our authorities and our regional boards' authorities from that site.

SENATOR PADILLA: We can come back to the conversation about the role of the State Board versus the regional boards, and how to communicate and work better.

Again, this is a classic example. The specifics on the threats to water in the San Fernando Valley include this by way of background.

We know that in the San Fernando Valley alone there are 4,000 businesses that have used chromium. And that's exactly what's setting off the red flags here. Yet, only seven of those 4,000 have been issued any sort of clean-up orders.

So, how do we use this as an opportunity to be, again, more proactive? What would you begin to suggest in this case, recognizing these numbers, to try to get ahead of the curve as opposed to reacting to a problem?

MS. SPIVY-WEBER: Well, I can't answer your question completely because I -- I do know that of the 4,000 that have been listed, some of the biggest ones are in the group of seven, and they are coming to the table.

And I will -- I will check to see with the

regional board as to -- I know they have sent out letters. I know they are trying to identify who the other big players are, because I've seen the letters that have gone out.

I don't know what the status is right now of actually bringing those parties to the table. They've been identified; we know who they are, and they're being contacted. But of course, some of them have long since gone out of business, and that's a challenge.

But I think the most important thing here is that the city and EPA, Federal EPA, have decided to, you know, move forward aggressively.

And part of the -- part of the problem here is that the drought in that area speeded up the degradations. So, it's something that we're going to have to be dealing with at the clean-up level, but we also need to make sure that the groundwater basins are full and have good water so that you don't get that kind of quick migration that we got.

SENATOR PADILLA: Again, that's a great point, but Southern California, Los Angeles in particular, are no strangers to drought.

MS. SPIVY-WEBER: Right.

SENATOR PADILLA: So, that as an explanation of why something happened that we're going to catch doesn't fly.

MS. SPIVY-WEBER: Right.

Well, I think -- I'm hoping that with our new recycled water policy we will be able to do more with that.

I think that with the Sun Valley Project, where you're capturing storm water, and infiltrating storm water into

that groundwater basin, that's a fabulous project.

SENATOR PADILLA: If we can only get it funded.

MS. SPIVY-WEBER: Well, that's true. And we will work. There's been, I think --

SENATOR PADILLA: First phase.

MS. SPIVY-WEBER: There's some -- there's some new funding, I think, that I just heard about.

SENATOR PADILLA: Let me switch topics here. I want to talk about beach closures.

Everybody brags about the California coastline, how beautiful it is. It's an attraction for tourists, and it's certainly a treasure for all Californians.

Unfortunately in 2007 so far, there's been 56 beach closures, 70 percent of those occurring in the San Diego area, maybe 30 percent in the Los Angeles area. It's a Southern California heavy problem. All of these are accounted for by sewage spills.

What is the role of the Board in preventing and mitigating sewage spills as it affects not just the coast but all water supplies in extension?

MR. BAGGETT: There's a couple. One is the enforcement program which we have been pretty aggressive in Southern California. I think Fran could probably speak closer to that issue than I can.

But we've been very aggressive with sewer overflows, doing fines, doing administrative or environmental projects, supplemental environmental projects, and allowing districts to fix some of those problems.

We have a very proactive state revolving fund program to loan money to cities and counties to take care of these problems once they've been identified.

SENATOR PADILLA: On that point, just quickly, is there any weighted, or advantage, extra points in your application to cities or counties that have established their own sewage clean-up or storm water management funding streams?

Specifically, I'm referencing Los Angeles' Prop. O.

MR. BAGGETT: We do have a -- we actually won a national award two years ago for a program we implemented, giving bonus points for smart growth. If someone comes up with a storm water management plan and looks at their future development in a whole, they can get bonus points for loans, move up on rankings, and so on. And we try to fund people that are -- recognize if you're doing the right things, trying to do the good, smart things, things that prevent -- I think, to go back to your earlier comments -- prevention-type activities, you get points.

The beaches, I feel we've been making quite a bit of progress. I mean, the Clean Beach Initiative over the last six years has awarded a number of bond funds to Southern California communities to try to fix the outfall problems. Some of these go back years.

Our monitoring program now in the Santa Monica Bay is very extensive. So, we are finding problems we didn't even know were problems because we didn't ten years ago have the data.

We also have the most stringent beach standards in the country in terms of E coli, which is good. But it also -- when you cut the standard in half, you have more problems. And we've identified those. We're working with the cities and the small communities, which a lot of these are, and a lot of communities without a lot of money, especially in the inland areas of Los Angeles County, and trying to help work on management practices and designs.

MS. SPIVY-WEBER: And a number -- there are two good news stories just recently we had in Laguna Beach. They replaced a lot of their sewer area, and they've gotten the businesses in that area to work to keep trash out of -- out of the systems. And they were declared by NRDC, Natural Resources Defense Council, list as a Beach Buddy, which is like a high -- a very clean beach.

Likewise in Los Angeles, the Mothers Beach in Marina Del Rey, the county has diverted two of the sewer pipes that discharged into that area. They've now hooked them up to the sewer, and they have -- with funding from the Clean Beach Program they've put in aerators. And since late June, there have been no exceedances in Mothers Beach. That is unheard of in recent years.

So, I asked, okay, what's -- how did this happen? Because I was at the regional board meeting when the county was quite proud of what had happened, the good news about Mothers Beach. And the response was from the county, as well as from the regional board, is that the cities and the counties are getting accustomed now to TMDLs. They're not fighting them so

much. They are actually recognizing that good things -- you know, with planning and investment, they will have a better system later.

So, I think it's, again, very much like your -- like your Sun Valley Project. Sometimes it takes a while to get people into a new system, but once you get them there, and they see the positive change, then they are -- they become fans and certainly much more supportive.

I do think, however, that we have to exercise our enforcement abilities and authorities when there are problems, and we do. And we hear about it, of course, when we do because sometimes people say, well, it was just an error; it's not a big thing. But we are working on that.

And I know again in L.A. and, I think, in every regional board, there is an enforcement unit that has been established in the last few years. And these units are gearing up to be -- they are more aggressive now, and they will be increasingly aggressive in the future.

SENATOR PADILLA: Let me pick up in a minute on what you just said.

You were nodding your head earlier when I said, is there any opportunity to reward local communities that are willing to commit their own dollars, whether it's through matching fund requirements, or somehow, recognizing Los Angeles' leadership with Measure O?

I don't know if other cities or counties throughout the state have taken a similar step.

MS. SPIVY-WEBER: I don't know that there is, but

I will certainly look into that because I completely agree with you, that that would be a good carrot.

SENATOR PADILLA: If you'd share it with my office once you do look into that.

MS. SPIVY-WEBER: I absolutely will.

SENATOR PADILLA: Or if there's a willingness to move forward with that sort of concept.

MR. BAGGETT: Santa Barbara has also, I think, dedicated one percent of their transient occupancy tax about three years ago to these types of programs, too.

SENATOR PADILLA: Last question, it was mentioned a second ago, and there's nine regional boards with, I think, nine members each, making 81 water officials in this state, plus the five State Board members, that's 86.

That's a whole lot of people who volunteer their time very graciously, but are charged with making some pretty complex decisions at times, both politically and scientifically.

Can you speak to the consistency of interpretation of the law, consistency of approaches, consistency of priorities, consistency of enforcement throughout the state, given there's 86 cooks in the kitchen?

MR. BAGGETT: There are. And I think, as I think you're aware, a couple of years ago, the administration put forward, Assemblyman Aghazarian, a bill to look at restructuring, and how these relationships work. And I'm aware the Senator has currently a bill. And I think it's a discussion that needs to continue on just the institution and how it's

organized.

With that being said, I think there are a number of ways we do deal with this. One, over the last -- it's only been over the last five years that we've had meetings with the Chair of the State Board and the chairs of the regional board on a monthly basis, a phone call. I know Chairman Doduc has continued that program which we started. And I think that's critical, just so once a month you can have a half-hour or an hour phone conversation with the volunteer chairs, as I would say.

Second, we've used our authority over the last -- probably year 2000 was the first hearing we did where it was actually -- the State Board has the ability to do evidentiary hearings on regional board issues. We can de novo take up an issue on our own motion from a regional board action, just like an appellate court. And the first one we did was in, I think, the end of '99. It was on the L.A. storm water permit. We took it up. We made it stronger, and it's won numerous court challenges and it's now in place, the SUSUMP Project, which I think was the beginning of this beach effort, a very strong permit which that region issued and we upheld.

We've done it in Tosco in the Bay Area, it was the second one, where we went to San Francisco and held a three-day evidentiary hearing on a regional board action dealing with Tosco and dioxin, and worked those issues out.

We've done it with Pacific Lumber on the monitoring requirements. That order went all the way to the State Supreme Court, where we prevailed.

So, we've tried to pick over the years, one every year or so, an issue of major statewide import, like storm water, like air deposition, like monitoring and timber. We've tried to pick up issues that we feel are important to all the boards, take them up, set a precedential order that the boards can then have some guidance.

Second, we can do formal guidance, and we have done that. It's been debated for a number of years whether to do statewide storm water guidance.

The problem with guidance is, it takes, as you know, years. It depends on how it is. It could take CEQA, statewide CEQA compliance. It can get very lengthy, and it's not near as efficient or quick from an administrative standpoint, but we have been doing that.

We're currently working on statewide guidance on wetlands. It's incredibly controversial. It's going to take -- you can imagine how long it's going to take. It's not unlike your hearings. The kind of diversity and arguments we can get when you start talking about some of these issues can go on for days.

And we have slowly tried to pick up what Fran's been working on, recycled water. That will be a guidance policy which will send guidance. We have taken up petitions from regional boards on a couple times. It's not as efficient on that one, and I think Fran's taking the lead on that. I'm not an expert in reclaimed water and don't pretend to be.

But those are the second way, other way we can do it.

Third is, we've had a tradition which we have increased the numbers of, depends on the budget year and how our travel budget works, but we try to get the regional board members as many together for a Water Quality Control Council at least once if not twice a year, which gives an opportunity for the nine regional board members, with their executive officers, with the State Board members, to have workshops, discussions, be it on enforcement, be it on how permit issues are going, on different issues. We've got one coming up, I believe, in October.

I know that some of your staff have been there. I know Kip's been to a couple of those and talked to our regional board members.

But that's another -- it's a forum, because there's nothing that -- and then lastly, we're liaisons to regional boards. We try to go to as many of those meetings as don't conflict with our other duties here, and hearings. Like, I go to the Region Six Lahanton, which is the Tahoe area, go to their meetings, have dinner with the board members the night before their board meeting, or have lunch with them, and get a chance just to have that interaction because we're full-time. And you can't expect a volunteer, one day a month, I think as you stated, Senator, to really understand the details of some of these complex laws and policy issues.

So, we all have our regions, and we try to spend the time in the field, go to their board meetings, listen, hear their concerns, answer their questions.

MS. SPIVY-WEBER: And I would just add that we

have just been going through a quite comprehensive strategic planning process that has engaged the regions. And we will be getting a document -- we will have a document together in October. We expect to take that back to the regions, and we want each of the regional boards to adopt the strategic plan. So, this is not just the state's strategic plan; it's the strategic plan for all of the -- for all the regions. They will have, by adopting it, bought into what the priorities are.

So, I think that will help in getting people on the same -- same track.

And I am working on a new statewide policy on water recycling. We don't have one at this time. And it should be on the street for public comment by mid-September. We'll have a hearing on it in Los Angeles October the 2nd. We hope to have it adopted by the -- early December. And we are working with the regions to get their input, but also stakeholders.

And I think we will -- I'm quite optimistic, actually, that we will, at the end of this year, be able to confidently say that there will be many more opportunities for water recycling to meet water supply needs in a safe way in the future. So, we're doing that on our own, and we do have a lot of support from the regions.

SENATOR PADILLA: Thank you, Mr. Chairman.

SENATOR ASHBURN: Mr. Chairman, my questions are directed to Mr. Baggett because you've been there a long time and have some history with some of the issues that I'm going to raise.

But first I want to raise the issue of Klamath and the positions that you may or may not have taken with respect to the removal of the existing dams at Klamath.

What has been your position with respect to the Klamath Basin and the removal of those dams?

MR. BAGGETT: The Klamath, I was previously involved in the negotiations, which I think many of you are aware of. So, since those are under a confidentiality agreement, I've got to be careful here. I mean, I still abide by that, even though I'm no longer participating in those discussions.

Personally, it's a hydro re-licensing project through the FERC, Federal Energy Regulatory Commission, for those four dams that are up for re-licensing. One's in Oregon; three are in California.

One of the -- one of the issues that is being looked at I know in the environmental document that's being prepared is dam decommissioning of one, two, three, or all four of them, potentially. And that's something you have to do an environmental document through NEQA and through CEQA, since it's for the three California dams. So, that will be -- is being examined. And that document, hopefully, Pacific Corp will now be working with our staff to prepare and look at the range of options and the range of opportunities.

I think it's like many of the issues we deal with, be it new water projects or new dams, I think you really have to look at the science, do the studies, as painful and as time consuming as they can be at times, to make sure you've got

it right. And I think that's what I would advocate on the Klamath: Look at all the options; do the science; is it in the best interest of the river, the eco system, or is it not. And the science will show that, the modeling that's being done.

Again, I'm not trying to be evasive. I just was in those discussions. They are under a confidentiality agreement and I feel --

SENATOR ASHBURN: I want to explore that, your role and the nature of the confidentiality.

How does that confidentiality come about?

MR. BAGGETT: It was a settlement discussion entered into by 26 parties, 27 parties. And all those parties signed into the settlement agreement with Pacific Corp the details of what is going on, just like in any negotiations, cannot go outside that.

SENATOR ASHBURN: And you're a party to --

MR. BAGGETT: I was.

SENATOR ASHBURN: In your official capacity or individually?

MR. BAGGETT: Individually.

SENATOR ASHBURN: So, that would lead me to believe that you have a position.

MR. BAGGETT: Personally, my position would have been at that point the position of the parties I was representing.

It was confidential. I'm not comfortable --

SENATOR ASHBURN: Who were you representing?

MR. BAGGETT: I was working on behalf of the

state initially.

SENATOR ASHBURN: In your official capacity as a member of the Board --

MR. BAGGETT: No.

SENATOR ASHBURN: -- or as an individual?

MR. BAGGETT: No, as an individual. The challenge --

SENATOR ASHBURN: How can you --

MR. BAGGETT: We've already got a challenge. I'm recused. If the Klamath ever comes before our Board, I'm recused because I have information which my colleagues, Fran and the other Board members, don't have because I was a participant.

SENATOR ASHBURN: How did you get yourself in that position?

MR. BAGGETT: It was -- it was a challenge that needed to be settled.

I worked on the Oroville settlement also, the hydro for the State Water Project. I'm recused if the Oroville matter ever comes up before our Board.

SENATOR ASHBURN: So, you get yourself in the middle of these confidential agreements by virtue of your personal interest, but your credential is the State Water Board? I'm asking.

MR. BAGGETT: No.

SENATOR ASHBURN: I don't know that folks just wander into these discussions.

I want to know why you're involved, and if your position on this Board is, in your view, is that your invitation

in?

MR. BAGGETT: I think some of it's finding a problem that needs to be solved.

When I was Chair, I also put together a working group on the Russian River with the wine grape growers, with the ag folks there, to try to solve a major backlog, which I think this Committee is well aware of.

SENATOR ASHBURN: But you're not doing that in your capacity as a member of this Board?

I mean, I'm asking.

MR. BAGGETT: I'm not binding the Board or -- no.

SENATOR ASHBURN: So, you're freelancing?

MR. BAGGETT: It's -- I guess it's part of the role, but I'm not representing the Board to do that. It's no different than a settlement.

SENATOR ASHBURN: Well, it is important because this now becomes, with respect to the Klamath, it now becomes a confidential document. It has profound effect on the decisions that take place there. You were directly -- involved. You can't even tell me what your role is, and yet the reason that you're there in my view is because you're a member of this Board, which requires confirmation.

MR. BAGGETT: The document, whatever, out of any of these settlements is a public document. It won't be done -- whatever --

SENATOR ASHBURN: But you can't even describe for me your role, your position, your advocacy. And yet, you've done so under the color of the position for which you're being

confirmed. Art Baggett, citizen, does not wander into these discussions.

MR. BAGGETT: One can do it on behalf. If you look at -- let's go back to another example, let's go back to the Russian. I mean, the Russian River. We know we had a major backlog there. We knew the stakeholders.

The environmental community came to me and said, "Look, can we put together," and so did the farmers, the wine grape growers. So, the Sonoma County Water Agency said, "Can we put together a group to discuss how to deal with this backlog of water right permits, how to deal with some of the -- some of the fishery issues?" Fish and Game was part of this. NOAH Fisheries. How can we solve this problem? It's intractable. We had over half of our state backlog permits on that river.

So, there's no end result yet, but under color, I guess, of my title I convened a group. They met. They are still meeting. We are not --

SENATOR ASHBURN: Did you ever come to your Board and ask for authority?

MR. BAGGETT: For that?

SENATOR ASHBURN: That or Klamath?

MR. BAGGETT: No, no. Did I have to? I wasn't doing it as a state -- I was a State Board member.

SENATOR ASHBURN: You're using your position --

MR. BAGGETT: I wasn't fining the Board.

SENATOR ASHBURN: You're using your position to elevate your status to become involved in private negotiations involving public projects. And then you can't reveal to me what

your position is or what your advocacy was. That's very troublesome.

MR. BAGGETT: There is -- let's stick with the Russian, because the Klamath is --

SENATOR ASHBURN: No, I'd rather discuss Klamath.

MR. BAGGETT: I think I can get to the point the same way. We could start at the Klamath. We could start back at the beginning of the Klamath.

SENATOR ASHBURN: I want you to deal with the issue of being a member of the State Water Board, a full-time position, subject to confirmation by the Senate.

And then using that position -- my word -- to then insert yourself in private negotiations or semi-public negotiations without ratification from the Board. You're representing somebody in this.

MR. BAGGETT: We can go back --

SENATOR ASHBURN: Are you representing the State Water Board? Are you representing the Governor? Are you representing the California State Senate? Are you representing Art Baggett, private citizen? Are you being retained by other entities as private employment?

MR. BAGGETT: No. Let's go back to the Klamath.

SENATOR ASHBURN: I want to know now not so much about the specifics on the dams.

MR. BAGGETT: Okay. I understand.

SENATOR ASHBURN: I want to know how you view your role.

MR. BAGGETT: I understand.

The Klamath, we can go back to the Klamath. Start it at Ground One, the year 2000 -- gees, let me see. Director Hite was at Fish and Game, myself, one of the Fish and Wildlife Regional Directors from the feds.

We realized we had a -- this was after the big fish die-off on the Klamath in 2005, whenever that was. We realized that we had a challenge. That river, headwater's in Oregon. So, Oregon -- so, some of the federal interest put together Oregon, California, and the federal fish agencies -- these are all government agencies -- to start discussing how can we avoid future catastrophes on the Klamath. It's an interstate issue. It's a state and federal issue. It's a NOAH Fisheries issue. It's a Fish and Game issue. It's a water quality issue in both states. How are we going to do this?

SENATOR ASHBURN: You're avoiding the question.

MR. BAGGETT: No, I'm not. I was a member --

SENATOR ASHBURN: You can describe forever the problem and the issues on the table, but I don't understand how Art Baggett got in the middle of these conversations without the knowledge of or the approval of the State Water Board.

MR. BAGGETT: Because one, it wasn't on behalf of the Board. If you'd let me continue where this went.

I was working at -- I was part of that administration, the Davis administration. It transitioned into the Schwarzenegger administration.

I was working with the other agency directors, secretaries, both under Secretary Hickock, Secretary Taminen, to try to put together a group of state and federal agencies to

look at the Klamath, to try to understand what the issues are, what kind of resources. We put together a group.

Eventually there was an agreement signed, a memorandum signed. It's a public document signed by Governor Schwarzenegger, Governor Kulongoski, the Secretary of Commerce, Secretary of Resources or Secretary of Interior, Administrative EPA, and the Secretary of Agriculture. Basically putting together a cooperative effort among the regulatory agencies in the Klamath watershed, across state lines, to look at all the various programs, state and federal fundings, to look at these issues, and we did that.

And out of that, through the FERC re-licensing effort, that came up. It was a major issue, and I was asked, is it worth having the two states sit down with the federal interest and try to settle this FERC re-licensing, try to -- rather than go -- as you know, FERC can go for 10 -- the Eel River's 20 years. It's still is not licensed. So, we tried to settle it.

CHAIRMAN PERATA: Excuse me for interrupting.

Maybe the essence of this is: Who asked you to do that?

MR. BAGGETT: I was working on behalf of the administration.

CHAIRMAN PERATA: So that was your color of authority, was the administration.

MR. BAGGETT: Yeah. I wasn't representing the Board. I wasn't doing anything for the Board. I'm not binding the Board.

CHAIRMAN PERATA: I think the Senator was asking you --

SENATOR ASHBURN: Thank you, that's what I'm looking for.

MR. BAGGETT: I drafted -- I personally drafted the MOU signed by all those people.

SENATOR ASHBURN: So, your standing was there as --

MR. BAGGETT: Right.

SENATOR ASHBURN: -- sort of extracurricular. You have your official Board capacity. You didn't communicate with the Board on what you were doing.

MR. BAGGETT: No, I couldn't.

SENATOR ASHBURN: You didn't seek their approval. So, someone in the administration asked you to do this?

MR. BAGGETT: Right. It's like the Russian, just trying to solve problems.

SENATOR ASHBURN: Okay, thank you.

Senator Padilla got into the issue of the State Board and the regional boards. I think we all share a concern for consistency and predictability.

How often does the State Board overturn the regional boards? Do you have a particular criteria that you're looking for?

MR. BAGGETT: I think it's what I mentioned to Senator Padilla. We look at -- well, there's three things in a petition. Someone petitions the State Board or -- or we can take it up on our own motion. We've done both. We look at

three issues.

One, statewide consistency and statewide policy. If it's something that's like way out here that they just did that doesn't make any sense compared to what another region's doing in another part of the state, so we look at that.

Two, if there's a critical issue of law -- they blew it; they blew some procedural issue. We've taken up petitions where, some on our own motion, where they blew a notice requirement by five days. So, we just took it up, cured the defect. Otherwise, we could spend lots of money litigating for the next two or three years.

Third, we'll look at if there's a major error in fact in the case, just like any appellate court.

So, those are the criteria.

We probably take up, if you look at all regional board actions, and there's a lot of them. I mean, 13267, it's a monitoring order issued by an executive officer. That's petitionable. We probably maybe get five percent get petitioned, if that, by one party or the other, one stakeholder, or we take up. Out of those, we probably take up ten -- it floats from year to year.

I always thought it'd be a great law review study over what's the history of the State Board petitions. They go in bunches, when we take them up and don't. Probably ten, maybe twenty percent of those, five percent we take up and actually do an order on hold, a hearing on, like I was talking to Senator Padilla about.

SENATOR ASHBURN: The ag waiver program.

MR. BAGGETT: Very familiar with it.

SENATOR ASHBURN: What's your position?

MR. BAGGETT: I think it's a necessary program. It's one that was required when the waivers were sunsetted five years ago.

There were 38 types of waivers. Out of those 38 types of waivers from state waste discharge requirements, most of them were very diminimus, like draining a swimming pool, or well drilling. There were four big ones, as you know. Ag was probably the biggest. Dairies is a big one, but that's all ready preempted pretty much by the Federal Clean Water Act. Timber was one, but we've got the agreements with the State Board of Forestry and have worked -- I think that one had a CEQA element that was done. The other one was septics, just to give you the background, and we're doing those.

Ag, irrigated ag runoff was a challenge. We couldn't say to state, waivered without conditions. You would have to say it was de minimus and had no environmental impact. Obviously, that's -- you don't have to be a water quality scientist to figure that one out.

So, we put together a conditional waiver program which is, in essence, if you look at what's called a waste discharge requirement, it's pretty much -- a lot of the requirements would go into what we call a WDR that are in this conditional waiver.

And the theory was at the beginning, this is a new program. No one in the history that I know of, even in Germany and other countries, has regulated agricultural runoff.

So, it's a new program. Our position then was, let's put together a conditional waiver, come up with five years of monitoring data. We started downstream and have slowly moved up. Many of the coalitions have spent millions of dollars. The Sac River, I know they've spent millions a year doing monitoring and meeting these requirements of this waiver.

We are now finally starting to get the data in and find out who the bad actors are. And we're having a workshop in two weeks in Fresno with the regional board to talk about how it's going.

My position is real clear. If there's bad actors that haven't been playing by the rules, haven't been trying to work seriously with our staff to get us the information we need to try to figure out where the pollution's coming from, they'll get waste discharge requirements.

SENATOR ASHBURN: Thank you.

CHAIRMAN PERATA: I hope all of you are not here to just talk about this issue, but if any of you are and would like to come in support of either of the nominees, both.

Those of you lawyers here that are on the clock, if you'd like me to sign your slip for your employer, I'd be happy to do that.

[Laughter.]

MR. McQUILKEN: I'm Jeff McQuilken, Executive Director of the Mono Lake Committee.

Familiar with the work of Art Baggett and Fran Spivy-Weber, and in support of both of their nominations today.

CHAIRMAN PERATA: Thank you. Very succinct.

MS. HADDE: Good afternoon. I'm Charlotte Hadde from the Planning and Conservation League.

It's a pleasure to speak and voice our support for Fran Spivy-Weber for her confirmation. I'll be brief.

I just wanted to reminisce on a quote that I once heard from Fran, and that is that every drop of water in California has a beneficial use. And I think that her work throughout her career has demonstrated this, and specially in helping regions maximize their self-sufficiency for water reliability and to improve their water quality.

And I think as California shifts its bond funding priorities to really place an emphasis on regional sources, I think that her work can serve as a model for how early collaboration between all stakeholders, and this includes irrigators, environmental justice communities, et cetera, is absolutely necessary to the success of regional water management.

Thank you.

CHAIRMAN PERATA: Thank you.

Next.

MS. COLE: Thank you, Mr. Chairman, Members of the Committee. I'm Kathy Cole with the Metropolitan Water District. I'm here to support both conferees' appointment to the State Board.

Art Baggett has certainly proven to be an effective and fair-minded member of the State Board. His presence on the Board has ensured some continuity, as well as ensuring that we have a thoughtful, reasoned solution to set the

course for California water supply for the decade to come.

Frances, we're a very good friend of Frances. She's been a leader in Southern California water issues throughout her -- her past. Her experience, her compassion for the issues, and her ability to roll up the sleeves and find solutions to tough, thorny problems has served California well.

We urge confirmation for both. Thank you.

CHAIRMAN PERATA: Thank you.

MR. LIND: I'm Allan Lind. I'm here on behalf of the Central Basin Municipal Water District.

I'd like to associate my comments with the previous speakers. We're in support of both candidates here.

We've known Mr. Baggett for a number of years. He's been very -- extremely fair and helpful to us.

And Fran Spivy is a leader in Southern California, and the Central Basin has had the pleasure of working with her for a number of years.

We're in strong support of both members.

CHAIRMAN PERATA: Thank you.

MR. CARMICHAEL: Good afternoon. Tim Carmichael with the Coalition for Clean Air.

I'm here in support of Fran Spivy-Weber, who I've had the pleasure of working with for the last ten years on a variety of efforts to bring environmental interests together on tough issues facing Southern California when she was working with the Mono Lake Committee. A person of high integrity and thoughtfulness, always been a great person to work with and trying to solve tough problems.

We strongly support.

CHAIRMAN PERATA: Thank you.

MR. MANNING: Mr. Chairman and Members, my name is Ed Manning.

At the risks jeopardizing confirmation of both of these appointees, I'm here to testify on their behalf.

[Laughter.]

CHAIRMAN PERATA: It depends who you're representing.

MR. MANNING: Yes. Well, I was Chair of the Mono Lake Committee Board for ten years or more and had the pleasure of both hiring Fran and working with her when she took us through a difficult transition and did just an incredible job of bringing people together.

And also in that capacity, I had the pleasure of working with Art Baggett when he was first appointed to the Water Board, who provided immediate leadership.

And I think the state has benefitted from Art's service and will benefit from Fran's, and strongly support their nomination.

CHAIRMAN PERATA: Thank you.

MR. KANOUSE: Mr. Chairman, Committee Members, Randy Kanouse, East Bay Municipal Utility District.

We too support both of these fine individuals. We have worked with Mr. Baggett in his eight years on the Board. We have worked with Ms. Spivy-Weber in her capacity at the Mono Lake Committee.

And we believe that they are both highly

qualified for service on the Board.

Thank you very much.

CHAIRMAN PERATA: Thank you.

Anyone here in opposition? Excellent.

I have one question. In terms of funding, do you have fee authority?

MR. BAGGETT: Yes.

MS. SPIVY-WEBER: Yes.

CHAIRMAN PERATA: So if there is a question about having adequate staff to do the enforcement, you could remedy that with your fee authority?

MR. BAGGETT: If the positions were authorized.

CHAIRMAN PERATA: By the Legislature.

MR. BAGGETT: Yes, and signed in the budget. That's the challenge. We can only hire -- expend fees -- only assess fees to the extent we can expend them.

CHAIRMAN PERATA: So, if they're not in the Governor's budget, then you're flat out of luck.

MR. BAGGETT: Or I think last year, two years ago, we had a bill put through -- the answer is yes.

Of course, we support the Governor's budget, but we will -- we live by that budget. So, if the budget authorizes seven positions, you know how it is.

CHAIRMAN PERATA: I just wanted to get clear on that.

What I'm about to say is predicated on a couple of years of work in this area, at least since I've been in the leadership of the Senate, and a lot of the concerns that I have.

First of all, it's sort of action axiomatic to say that there is nothing more fundamental than the purity of our water. It's probably the a priori to how much water we have, the availability of it, and the ability to move it from place to place. If you don't have it clean, you don't have it at all.

We've already heard from Senator Padilla that whether it's in the interior or our beaches, we have problems.

The Governor's made this a big issue now. Any time the Governor talks, it becomes an issue. And when he talks about something, he always talk about it in very large terms: very big problems; big solutions.

Unfortunately, he has centered his interests primarily on storage and conveyance. Our problem, and the one you're faced with professionally and as full-time endeavors, is the condition water is in.

We have lots of laws on the books, and I think most of them probably are good laws. People up here take their title very seriously: They're law makers, so they make laws. With term limits, we have people making the same laws every two to four years. So, there's no paucity of code sections.

The problem is how those laws get implemented, enforced, and whether or not there is adequate funding and staffing. And by all accounts from what I can see, and what's more important, some of the people who are here today who have said that they approve of you and they're pleased that you're in that position, also are very critical of all of the things that I just mentioned: the lack of staffing, the lack of

enforcement.

And so, we've got good people serving in a full-time capacity in a system that is a morass because no one's ever going to convince me that 81 people serving part-time, at-the-pleasure-of, are ever going to do anything other than convolute.

So, what we need to look at is your role as real professionals, and notwithstanding who sends you out to do a job, we have to have accountability. So, the buck really does stop there. Truman was right about a couple of things, and that's one of them.

What we really need to look at, you can't do anything about the 85, 86, 81. We're trying to screw around with them ourselves.

Even when you identify a problem, it's kind of like going to the doctor. He'll say, "You certainly have a malady. What you're feeling, you're feeling," but they can't provide a remedy.

I often feel that way as I look at the water thing. Of course you want it clean, stupid. And then you have to figure out how to do that.

So, the structure itself that would provide the accountability we have to wrestle with here.

It would be eminently useful if, when you're driving around, going visiting, if you have thoughts about how to streamline that process, I wouldn't mind at all if you'd mention it to me. You know, put it in a brown wrapper or something.

Art, you and I have known each other long enough. Just say so, because unlike some people, I don't think that history started the day I got sworn in, or I'm the brightest guy on the block. I mean, in my position people indulge me and tell me I am, but in my quieter moments, I know it's not true.

So, that's one thing on the accountability.

On the public disclosure side, we're supposed to get reports every January, and we don't get them. Last year, we didn't get it until the third quarter of the year. This year we haven't even gotten it yet. We've been asking for it.

So, I know you'll take that back to your Executive Director, but last year's report was pretty frightening, and maybe that's why we have a hard time getting this year's report.

The last enforcement report says, and I am quoting:

> "Water Board staff does not detect violations for several months after they occur."

End quote.

The report also says that of the violations it did find, 86 percent were left without a complete enforcement action, and only 7 percent had any formal action taken.

Now, that's -- and I'll provide you a copy of this -- that's something that we're going to revisit in January, because that's pretty freaking alarming.

So, if you go onto the web site -- and I must say, I have not frequented your web site. I mean to every time

I go home, but sometimes other things get in the way.

[Laughter.]

CHAIRMAN PERATA: But I have been told by people that care about these things, that have some facility not only with web sites but what they mean, that you can't determine anything by looking at our web site about the quality of water.

Now, take that from an idiot, and then see if you would agree. Would someone like me, going on the web site and wanting to know how the water is, and I drink EBMUD water, Randy's water -- by the way, Randy, Senator Calderon said to say hello.

[Laughter.]

CHAIRMAN PERATA: I would like your assessment of that. We're very fortunate that we have the opportunity now of being able to go a site and check things out.

The third problem that I've come across is that we're just not spending enough attention in getting our arms around polluted runoff and groundwater pollution. Now, there have been comments made by Members that we have looked at.

We are, in fact, allocating funds to clean up a number of underground aquifers in the southern part of the state on the theory that if they can store some of that water, they wouldn't go through it quite as fast. It's self-serving. They need stuff in Bakersfield like you cannot believe. So, if we can do something in San Gabriel, so much to the good.

Last year, people died and California's spinach industry suffered not only hundreds of millions of dollars in economic losses, but in probably irreparable damage to their

reputation because a polluted runoff contaminated their produce.

People living in communities from the Central Valley to the Inland Empire can't drink groundwater because it's so polluted.

In Rialto, the regional quality board there has publicly said it cannot even enforce its own perchlorate clean-up orders due to the lack of funding and staff. And we have select committees on perchlorate in this House. So, we're up here, running around, trying to figure out stuff, when an obvious thing is, the water board down there says, "There are things that we can do, but we can't do it because we lack funding and staffing."

And list goes on.

I believe that, and my conclusion is, that we need far more determined effort and emphasis from your Board on groundwater clean-up. And that should be up to and including letting the Legislature know.

And this is a tough thing, but once you get sworn in and finalized by us, you're pretty much bullet-proof. You may not get another term, but you sure as hell can kick ass on the term that you have.

So, if you look at the administration's budget and you feel, based upon your overview of those other regional boards that we are deficient in funding and in staff allocations and cannot implement and enforce the law, I think you certainly have a moral requirement and, I believe, a political requirement to tell us so.

Your involvement over what's going on with the Delta is preeminent. You need to step up and do a much more aggressive job than it has been in the past, only because every third person you run into now says the Delta's going to collapse. And sooner or later, they may be right. And when they are, somebody's going to come looking for somebody, and we're going to be right at top of the list.

So, as long as we want these jobs, we ought to be doing the job.

You've got really good credentials. Art and I go back to when we were both on the Board of Supervisors, and we both represented beautiful areas. I had Oakland and he had Yosemite. I invited him frequently to reciprocity. He didn't come often. I went to his place frequently.

And certainly the struggles with Mono Lake, I appreciate and value the service there.

So, this is not about either one of you and your credentials. And people, probably with the exception of Mr. Manning, people who came up here and spoke on your behalf, I thought you should be proud of that.

He never did say who he was representing. He was just dropping by, I'm sure.

[Laughter.]

MS. SPIVY-WEBER: His wife.

[Laughter.]

CHAIRMAN PERATA: But here's what I'm going to do. We're going to put these appointments over until January because I want a conversation again based upon what has been

said here. This stuff is very closely held to all of us, regardless of our party affiliation.

I urge you to pressure, to influence, cajole, embarrass all of us -- the administration, us -- if we are failing to do our job and failing to provide you what you need to do your job.

Now, we've charted out some things right now that in the next six months I would like to see addressed. And when you come back in January, I want to have a conversation about that. And at the point that you get back, the budget will have already been out, so we will know whether or not it is reflecting what we think we need.

There's a lot riding on your two appointments. A lot of people, and no disrespect to the people who are here to be confirmed in other capacities, but we very seldom confirm anyone as important or more important than those of you that serve on that Board. So, you've got a lot riding on it. My expectations are very high, but I very seldom expect things from people that I don't think they can deliver. And I'm certainly not expecting more than I think you can do right now.

So, I want to thank you for being here. I want to thank you for your candor. I'll expect more candor, more noise, more sparks.

And if there's anything in the interim that you can provide us that would help us give you what you need -- it does not have to be for attribution -- it just has to be said to us, because I will rely upon what it is that you say.

God speed, and we'll see you in five months.

Thank you both.

We will lift the call on Mr. Monday.

SECRETARY WEBB: Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Four to zero.

CHAIRMAN PERATA: Senator Dutton is absent today. He's out ill.

Our next, if you want to come up here, James Boyd, member of the State Energy Resources Conservation and Development Commission. Ain't that a mouthful.

Welcome, Mr. Boyd.

MR. BOYD: Thank you, Senator. That's why it's known affectionately as the Energy Commission.

CHAIRMAN PERATA: Oh, that's what it is, yes.

Welcome.

MR. BOYD: Thank you.

CHAIRMAN PERATA: Tell us anything you'd like to tell us.

MR. BOYD: Well, I'll try to be brief. I've learned that's appropriate.

I want to thank you for your consideration of my appointment for another term on the California Energy Commission. It's been my pleasure to have served the people of California in this capacity for the past five years.

These are very exciting times right now, with increasing opportunities to make energy contributions to frankly advancing California's health, welfare, and certainly the economy of the state, which sometimes sits on that energy

stool.

I've been fortunate to have served my native state as a public servant for over 45 years. And as a fourth generation Californian, with roots in Oakland -- I added that -- I am certainly grateful to have served and, frankly, to be able to serve, and hope to continue to do so.

So, I thank you for your consideration, and I frankly thank all those who have supported me for both the appointment and confirmation in the past and present.

I'd be glad to answer any questions.

CHAIRMAN PERATA: Do you want to tell us where you went to college?

MR. BOYD: UC Berkeley.

CHAIRMAN PERATA: I'd like to get that on the record.

Thank you, sir, and thanks for your long history of service.

There's a bill that I happened to author -- although that's immaterial -- that passed last year; the Governor signed it. It set up the state's greenhouse gas performance standard to ensure imported power was clean.

Subsequent to that time, the Utah utility is suing those utilities, our utilities, for reducing their use of coal power from Utah.

Are you aware of that suit?

MR. BOYD: I'm aware of it. I'm not deep into it, but I'm aware of it.

CHAIRMAN PERATA: And we are defending ourselves?

MR. BOYD: I believe -- I believe we are.

My agency was author of the policy statement sometime ago about reducing our dependence on power from out-of-state that couldn't meet the equivalent Commission's performance of a natural gas-fired combined cycle plant, which is the cleanest around at the time. So, we feel very strongly about that.

CHAIRMAN PERATA: What's the Energy Commission's relationship to AB 32, which has been in the news a little bit lately?

MR. BOYD: Well, many state agencies have a role this AB 32 when it comes to taking actions that would control the emissions of so-called greenhouse gases. And we are, as an agency, included in the Climate Action Report and are members of the Climate Action Team of the state.

And actions that we will take on, well, such as the bill you just mentioned, or actions that we take on Building and Appliance Standards, or actions that we may take in efficiency measures all have direct and maybe spill-over benefits on climate change.

So, we have a fairly long menu of responsibilities under AB 32 to fulfill, as well as engaging in activities like you referenced, overseeing what is the, let's just say, cleanliness or the emissions characteristics of our power supply in the state.

CHAIRMAN PERATA: Is there any crossover at all with land use or transportation?

MR. BOYD: Yes, because quite frankly, I think

everything's now part of a great system, and everything crosses over.

There are three legs to the transportation stool that my agency is engaged in. And our work on reducing our dependence on petroleum, or pursuing alternative fuels, and diversifying our fuel portfolio for security purposes if nothing else, and those are the technologies by which we move ourselves around is a concern to us, but more something that's in the bailiwick of the Air Resources Board.

But fuels are very strongly a second leg. The fuel supply in the state is very much part of our responsibility.

And the third leg, the one that's been most neglected, is land use and transportation. We have consistently called that out as an issue that needs to be addressed. The Integrated Energy Policy Report of 2005 pushed that subject.

And my fellow commissioners are deeply engaged in the preparation of the 2007 Report, since it's a biennial report, and putting a very heavy emphasis on land use and transportation planning that really aims at reduction of vehicle miles traveled, reduction in vehicle hours traveled, just a reduction in travel which addresses congestion. But it addresses -- the way we plan our cities and our communities is all part of addressing our insatiable appetite for transportation fuel and trying to reduce that.

So, yes, there's a strong linkage, and of course it then links to climate change. Climate change seems to be the greatest driver of all these activities these days.

CHAIRMAN PERATA: Is this report static, or do you have any enforcement, regulatory enforcement ability?

MR. BOYD: Well, the Energy Commission doesn't have a lot of enforcement authority. We do set standards for buildings and appliances. We do permit -- we do license the construction of power plants. And I may be forgetting one or two other things.

But we don't have a lot of authority. We have been historically the policy identification and recommending authority. And after the energy crisis, there was a piece of legislation started in the Senate by Senator Bowen that required the preparation of this Integrated Energy Policy Report every two years, which I think is a very significant improvement. So, in our ability to know what the energy issues are, and it said look at electricity, natural gas, transportation fuel.

So, we push a lot of subjects out on the table in that report. We stick a few needles in folks, even sister agencies.

But other than through cooperation, collusion, and persuasion with these agencies and with a lot of other people, we don't have a lot of authority.

The authority we were given with regard to municipal utilities in the climate change arena is very new authority. And I'm pleased to announce that this morning in our business meeting, we -- we passed the final version of our rules with regards to municipal utilities, which we had first passed in June, but they were rejected by the Office of Administrative Law. So, we tidied them up and have resubmitted them in a form

I know they'll be approved.

CHAIRMAN PERATA: Liquefied natural gas, there's been a couple of projects proposed in the state. What is your general view of LNG, and how much is needed?

MR. BOYD: My agency is on record of indicating, starting in 2003, the need for more natural gas supplies in California. It was identified by California way before others as the cleanest burning fossil fuel. And in my air quality days, we pushed everybody to burn clean-burning natural gas in their boilers instead of fuel oil. Fortunately, we don't have coal in the state.

But we've said we need more gas. We've said we don't care where it comes from -- north, east, south, west -- but we need gas. And if it has to come from the west, it has to come via the only pipeline available in a ship as LNG. And so, we have been basically supportive of the idea that we will probably need LNG some day.

During the energy or electricity crisis, I think the state discovered that, contrary to the knowledge that existed for decades, the North American Continent wasn't exactly totally awash in natural gas. The demand for gas -- everybody was learning it was clean-burning and wanted to use it east of here. And the Canadians were hanging on to more of their gas, so we do have a need.

If a facility can be constructed that is environmentally sound and safe, I think we're supportive of the idea that some LNG needs to come into California.

As you know, there is a facility almost done in

Baja, and many people are contesting to build something off-shore of California. I think on-shore is history, but off-shore of California.

CHAIRMAN PERATA: What role do you have, does the Commission have, in gasoline supply and oversight?

MR. BOYD: We -- we certainly track gasoline supply. We have no authority to influence that supply, other than the authority of persuasion, which we have used historically in terms of at least working with the oil refining business about when they might schedule maintenance, or, you know, when people might be wanting to ship something our way that we might be able to help with.

But we're on record starting in 2003 indicating that California's demand has far outstripped the supply, and that we need to do something about it. And that something about it has been, we'd like to see more efficiency programs. Unfortunately, that's CAFE regulated at the federal level. We'd like to see the introduction of better technologies that use alternative fuels. We'd like to see alternative fuels introduced and, as we talked about before, better land use in transportation.

But in the meantime, recognizing we are totally tied to petroleum, gasoline, and diesel fuel, we do what we can to maximize the availability of that for California. That involves the operation of the pipelines, the refineries, and the import facilities.

And starting in the '90s, California became more and more dependent upon imports of even finished product, or

blending components for finished products, not just crude oil. And we work with that issue. Now, that's a tough issue in this state. Ports are congested. Ports are more interested in containers than they are in liquid fuels, and that's been an issue.

And we try to keep our finger on the pulse and try to do what we can. But frankly, our major emphasis is to try to divert away from that dependence.

CHAIRMAN PERATA: Wind, I have a sizeable wind farm in my district. There's been some concern that the guidelines are going to be effectively disincentives for the continuation or the sustaining of wind development, wind energy.

An opinion?

MR. BOYD: I'm disappointed to hear that some people may perceive the guidelines as disincentives.

Our agency is deeply invested in renewable energy, and in the need for wind power. We have struggled mightily to try to get transmission facilities upgraded or even built to support renewables, in particular wind.

There is an issue, and it's particularly relevant in -- in your area with regard to what wind machines may do to wildlife, particularly those that fly. And it does seem that the wind farms in the Altamount Pass are -- are perhaps initially not placed in the best places, the research is beginning to show. Other parts of the state don't have that problem, but also their wind machines aren't built in what's turning out to be right in the path of major flyways.

I do think the guidelines may be a little more

strict with regard to protecting that wildlife, but at the same time we've been working with people to try to incent repowering with more efficient machines anyway and slight changes in the placement of the machines to -- to give the birds and bats a fighting chance, so to speak, and to stay out of their flyways.

CHAIRMAN PERATA: I've seen some of the recent generations of these machines. They're enormous.

When they get replaced, they're not one-to-one replacement; are they?

MR. BOYD: Not necessarily, because as you say, we're replacing tiny little machines with fairly -- you know, the general course now is a one megawatt machine. We used to have, you know, 750 kilowatt machines.

So, while we're trying to add more capacity, it doesn't take as many machines to, A, replace the capacity or even be -- add to that capacity.

And there is some hope, although it's unfounded, that these large machines, with their much slower moving blades, might actually give some of that bird life a better opportunity to sense, see and avoid the machines.

CHAIRMAN PERATA: Thank you.

Mr. Padilla.

SENATOR PADILLA: Thank you.

A couple questions. Again, requesting your general thoughts on first the state of local distribution infrastructure throughout California by utilities. And the investor-owned are required to report to the PUC every year on the state of their maintenance, their condition, their

investments, and not to generation. There's been a lot of attention and legislation regarding that. And in the area of transmission, there's been a lot of legislation and attention placed on that.

But really the local distribution infrastructure at the local level, municipal utilities aren't required to report either to the PUC or to this body with that information.

Can you comment on that?

MR. BOYD: Well, I would say that first, of the three areas you mentioned, which are the three primary areas -- generation, transmission, and local distribution -- local distribution is the one that is reported least to us and is primarily a responsibility of the -- of the PUC.

Our involvement with local distribution systems may come in on occasion with regard to the siting of new generation facilities. Very definitely the transmission capacities and capabilities and needs are assessed. And on some occasions, it's necessary to move into whether the linkages to distribution system are adequate.

But primarily, we do not get into the distribution system. We've reserved ourselves more to the overall concern about the transmission system.

SENATOR PADILLA: Would it be helpful to you to have that information, while maintaining the independence of municipal utilities?

MR. BOYD: We've just moved into the municipal utility arena of late, and we've done that very carefully and cautiously because they have mightily resisted the intrusion of

government.

SENATOR PADILLA: What percentage of Californians are served by a municipal utility?

MR. BOYD: About 20-25 percent.

SENATOR PADILLA: May I ask for your thoughts in a different arena. We've had a chance to speak in my office regarding conversion technologies.

A lot of people think of and discuss conversion technology and facilities as it pertains to a waste management dialogue, yet the output of a conversion technology facility is on the energy side.

Is this something that's been before the body for discussion?

MR. BOYD: Yes. As we discussed, one of the things that's high on the agenda of the Energy Commission is this whole area of not only renewable electricity, but biopower or bioenergy, be it biopower or biofuels. And that involves using our waste stream, our various waste streams, in various capacities to produce either electricity to make biogas, which becomes part of the methane or natural gas system, and finally to make biofuels, liquid fuels.

We are very constrained in some areas with regard to people getting at those supplies. There's a lot of material in the forests, but there's a lot of concern that going into the forests means cutting down trees. I don't think we mean that, but that's a hurdle we have to get over. And there's a lot of concern with regard to intercepting the materials that are en route to municipal waste sites.

There's an incredible amount of material in this state. We don't have to grow energy crops, in my opinion. There is so much -- there's such a huge waste stream that if we could get better access to it, and perhaps one of the most difficult ones has been intercepting the materials going to waste sites. There's cellulosity material both in the form of urban wood waste, incredible amounts of urban wood waste, that are filling up the -- the landfills unnecessarily, and even green waste, that there are now technologies capable of beginning to make energy out of these.

And there are -- there are hurdles that we need to address to -- to get to those, to assure people we're not trying to interrupt the recycling business, or not put the landfill operators out of business, just perhaps slow down the rate with which landfills are filled up, but to use those waste materials in a beneficial way.

And this conversion issue has been very contentious. It goes way back in my career, way beyond the Energy Commission to my Air Board days. And it's something we'd like to see -- as I said, these are exciting times, and we need to get that resolved more quickly.

SENATOR PADILLA: Your words, we don't want to put landfills out of business.

But I do believe it's the policy of the state and many local jurisdictions throughout California to reduce our dependence on landfills.

MR. BOYD: Very definitely.

SENATOR PADILLA: A follow-up question is, when

the term conversion technology is used, is that a reference to one single specific technology, or are there multiple types of facilities that could fall under the category of conversion technology?

MR. BOYD: Well, it's a term that to me is broad and generic and applies to multiple technologies. But I think it's a term born of -- before my time in the energy business -- born of concern about garbage burning, and mass waste burning to perhaps reduce energy, and a concern about intercepting materials that could be recycled.

I apply that barrier to just getting at some of the materials that I mentioned that could be gasified to make biogas, or that could be distilled in one form or another to make a bioliquid fuel, but we run into the same concern.

SENATOR PADILLA: Another, concerns about conversion technologies, to use the term more generally or broadly, have to do not just with the fuels, what we're putting into the black box, if you will, but depending on the process: if it's high heat; if it's low heat; what type of emissions or pollutants or byproducts are coming as a result.

Is that correct?

MR. BOYD: Yes, that's correct. And from my many years in the air quality business, there was lots of concern about the emissions that might come from the use of some of these technologies and some of these materials as fuels.

But thank goodness, in my opinion, the ever accelerating pace of technological development has brought us technologies that can be safe if we apply them.

SENATOR PADILLA: Are you saying there's technologies out there that are, quote-unquote, fair both from a safety standpoint, from a zero or minimal emissions and contaminants standpoint?

MR. BOYD: Yes. And one of the Department of Energy biorefinery grant projects is going to be built here in Southern California with some financial aid from the Energy Commission's Peer Program as well to demonstrate that fact.

But it is still a fairly substantial demonstration project, but it's the beginning, we hope, of maybe proving that -- that we can do it safely.

SENATOR PADILLA: We're certainly learning more about that.

The final questions I have are in the area of sustainable building and green building, as it's more commonly known. We talk a lot about energy supply, but there's a lot to be said for the demand side of management. With or without the context of the greenhouse gas reduction discussions that are out there, technologies now exist to build or to construct various types of buildings much more efficiently.

Can you expand on what your involvement has been in that arena?

MR. BOYD: Well, I think the Energy Resources Conservation and Development Commission, when was created some 30 years ago, was -- was created with the hope in mind that maybe through measures other than just building power plants we can meet some of this electricity load as well as addressing the other energy issues. And so, California pioneered the Building

and Appliance Efficiency Standards that have become, frankly, world famous and have led the way in proving that efficiency is a way to -- to save demand and manage demand.

Efficiency is job one in our policy statement. And the one that we and the PUC have adopted jointly, efficiency is the top priority. And we continue to improve and increase the stringency of our standards for both buildings and appliances, and we continue to get a little more, hopefully, creative in moving out in that arena to make even greater improvements.

That's the cheapest way to meet the electricity demand, is through efficiency and through demand management programs. You used that term, and we and the PUC are working very collaboratively, and I would say probably better than ever in the history of the two agencies these days, on programs like that, to -- to provide the tools that are needed to implement demand management, such as smart meters and communications devices to inform customers and utilities back and forth.

So, these are areas that are ripe for additional improvement.

SENATOR PADILLA: Have you been involved in any efforts to some ensure that in new state facilities, or by retrofitting exiting state facilities, we can get state buildings to be more efficient?

MR. BOYD: Yes. Our staff, who are expert in this area, do work on the Green Buildings Task Force that exists within state government to -- to help stimulate, and push, and educate, and facilitate the building of government buildings

that meet some of all those -- or meet all those efficiency standards.

SENATOR PADILLA: My last question, do you receive periodic reports or updates from staff that can quantify what sort of investments or specific retrofits have been made, and how much energy has been saved? How much emissions has been reduced by making our buildings more efficient?

MR. BOYD: I'm pretty confident that staff has that material. I don't serve these days on the Efficiency Committee, so I haven't personally seen those of late, but I would be surprised if that data does not exist because we do try to track progress against plan in that arena.

With regard to emissions, perhaps the Air Resources Board is a more likely source of that data, but I can certainly check into that for you.

SENATOR PADILLA: I look to ask for your help in obtaining that information.

MR. BOYD: Glad to help.

SENATOR PADILLA: Thank you.

CHAIRMAN PERATA: Anything further?

SENATOR ASHBURN: Just a very brief comment.

I've known Jim Boyd a very, have long time. And while we don't agree on every issue, I think you can see from his comments here that he is extraordinarily knowledgeable, and a very innovative guy.

So, I'm hoping that we will do the right thing shortly.

CHAIRMAN PERATA: So is Evelyn.

[Laughter.]

SENATOR ASHBURN: In fact, I'll make a motion.

CHAIRMAN PERATA: Great.

Do you have family here?

MR. BOYD: No, I don't. I have my administrative assistant and my advisor.

CHAIRMAN PERATA: They have to be here. That's different.

MR. BOYD: My children are all grown up and went away, and they didn't want to spend the price of a plane ticket to come and see their dad.

CHAIRMAN PERATA: Anyone here in support? Be very brief, because Evelyn's going to drop dead.

[Laughter.]

MS. GOUGH: I wouldn't want to be responsible for that.

CHAIRMAN PERATA: No, you don't. It's a huge burden.

MS. GOUGH: Thank you. Kassandra Gough with Calpine.

I usually don't want to date myself, but I've only known Jim 10 years of his 45 -- oh, my word -- in both a professional capacity, working with him as a colleague, and as well as working with him on matters related to Calpine.

And I think Senator Ashburn said it well. You can see his expertise benefits the state, and I'm glad he's agreed, talked into, or whatever it was, but that hopefully he'll be with us for at least one more term at the CEC. We're

glad to support him.

Thank you.

CHAIRMAN PERATA: Thank you.

MR. CARMICHAEL: Tim Carmichael, Coalition for Clean Air, in strong support of Mr. Boyd's confirmation.

CHAIRMAN PERATA: I like your style.

MR. BOESEL: John Boesel with CALSTART, 140 companies developing clean transportation technologies.

We need Jim's expertise to look across air quality, energy security, and climate change. And he can really see all across all those areas.

Thank you.

CHAIRMAN PERATA: Thank you.

MR. LYONS: Joe Lyons with the California Manufacturers and Technology Association in strong support of Mr. Boyd's confirmation.

CHAIRMAN PERATA: Thank you.

Opposition?

We have a motion. Please call the roll.

SECRETARY WEBB: Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Padilla.

SENATOR PADILLA: Aye.

SECRETARY WEBB: Padilla Aye. Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to zero.

CHAIRMAN PERATA: Congratulations and thank you.

MR. BOYD: Thank you very much.

CHAIRMAN PERATA: We'll take a 10-minute break.

[Thereupon a brief recess was taken.]

CHAIRMAN PERATA: Next, Jaime Fall, Deputy Secretary, Labor and Workforce Development Agency.

Does this also have a special title?

MR. FALL: No, but we could give it one.

CHAIRMAN PERATA: Welcome.

MR. FALL: Thank you. Good afternoon

CHAIRMAN PERATA: Do you have family here?

MR. FALL: I do, thank you for asking.

I'm proud to have my wife, Tamara, and my two daughters, Lillian and Lainey, here with me.

CHAIRMAN PERATA: Wonderful. Welcome.

MR. FALL: My name is Jaime Fall. I have the privilege of being nominated to serve as Deputy Secretary for Employment and Workforce Development of the Labor and Workforce Development Agency.

I have worked in the workforce development field for 12 years, most of that time in Washington, D.C., primarily on the staff of the National Association of State Workforce Agencies, the national association serving the labor and workforce development agencies of each state.

In addition, I served as Communications Director for the U.S. Department of Labor's Employment and Training Administration.

Between those assignments, I served with my wife at our own company called Communications -- Marketing and Communications Company, where I worked exclusively on workforce development projects.

As you know, this is a time of great economic opportunity in California. We lead the nation in many of the hottest, most promising fields that offer high wage, high growth jobs, including information technology, biotechnology, nanotechnology, and clean technology. Other key industries such as agriculture and manufacturing are undergoing challenges, yet still remain foundational for our economy and make substantial economic contributions to the state.

And it's also a time of great economic challenge. We continue to have our federal job training program budgets cut. We face severe shortages of skilled workers in many areas, and we have a higher percentage of workers coming into the workforce with less than a high school diploma or GED.

Should you confirm me as Deputy Secretary, I have three primary goals for my tenure: Make the most efficient use of our workforce development funds; increase the amount of outside funds we have available for workforce development activities through grants, public-private partnerships, and hopefully some day through increased federal appropriations; and my third goal would be to maximize the economic impact of the workforce development activities of the state by helping individuals reach their career potential and helping businesses compete globally and grow.

In closing, just let me say it's been a great

privilege to be at the Labor and Workforce Development Agency. The employees of the agency, the Employment Development Department, the California Workforce Investment Board, the Department of Industrial Relations, Cal Biz, and the Employment and Training Panel have all been welcoming, gracious, and supportive. They've proven themselves to be great professionals, and I appreciate having had the opportunity to know them and to work with them.

Thank you, Members of the Committee, for this opportunity. I appreciate it very much. I look forward to answering your questions and working with you in the future.

CHAIRMAN PERATA: Thank you.

You're a Jay Hawk?

MR. FALL: Yes, sir.

CHAIRMAN PERATA: A young Jay Hawk.

[Laughter.]

CHAIRMAN PERATA: I have one question.

When we have, like in the City of Oakland, a Private Industry Council, do those funds come through you?

MR. FALL: They pass directly through us: 85 percent of the funds the state receives go directly to the local levels for their activities; 15 percent stays at the state, at the state level for state administration, and then for the Governor's discretionary process.

CHAIRMAN PERATA: What oversight authority do you have once it leaves your hands?

MR. FALL: Not as much as we sometimes wish we had. The federal law, frankly, is pretty weak.

As long as the local area is meeting its performance requirements, we do not have authority to take -- to take any of those funds back. We can work collaboratively with the local areas, which we've tried to do, and set direction, and work jointly with them on policy initiatives.

But at the end, the Workforce Investment Act is designed to be a locally driven, locally designed system, and that's what it is.

CHAIRMAN PERATA: So, any performance standards would have to be exacted through the local governing board, like the city council?

MR. FALL: If you're asking if we wanted to impose some sort of a sanction or make any sort of change, we would have to prove that they have performance deficiencies to the U.S. Department of Labor before we could do that.

CHAIRMAN PERATA: Do you have the wherewithal to do that? Can you go in and investigate?

MR. FALL: We monitor their activities all the time.

If they're spending their money appropriately, and there is not any type of fraud and abuse or misuse of the funds, then again, as long as they're making their performance requirements we're not holding a strong hand to -- to make too many changes.

CHAIRMAN PERATA: Encouraging.

Any questions?

It's nice to be placed in the middle of the pack. Everybody's worn out.

[Laughter.]

CHAIRMAN PERATA: Anyone here who'd like to speak in favor of Mr. Fall? Family excluded.

MR. STENSLIE: Good afternoon. My name is Bruce Stenslie. I represent the California Workforce Association. We represent those sometimes recalcitrant 49 local workforce boards.

I'd like to say just three things real quickly.

CHAIRMAN PERATA: Gee, you're sensitive.

[Laughter.]

MR. STENSLIE: We really appreciate working with Jaime, and are here happily to support him.

He's helping, as he mentioned, bring in new resources to the State of California. He's helping immensely look at strategic planning as to how we can more effectively use the resources we currently have. And we really appreciate the work that he's doing to build partnerships between state and local opportunity.

He solicits our opinion. He listens to our opinion, and he has both manner and the honor to tell us what we need to know, as opposed to just what we want to hear.

So, we stand strongly in support. Thank you.

CHAIRMAN PERATA: Thank you.

MR. DIAZ: Mr. Chair and Members, Cesar Diaz, representing the State Building and Construction Trades Council.

Also in support of Mr. Jaime Fall's confirmation. He has been very responsive to building trades' issues at the local and state level. We believe that his experience with the

Federal Department of Labor will attract more resources from the federal government.

And we urge your support. Thank you.

CHAIRMAN PERATA: Thank you.

MR. SMITH: Mr. Chair and Members of the Committee, Jeremy Smith on behalf of the California Labor Federation, also in support.

CHAIRMAN PERATA: Thank you.

Opposition.

We have a motion to approve. Call the roll, please.

SECRETARY WEBB: Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Padilla.

SENATOR PADILLA: Aye.

SECRETARY WEBB: Padilla Aye. Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to zero.

CHAIRMAN PERATA: Congratulations, four-zero.

MR. FALL: Thank you.

CHAIRMAN PERATA: Thank you very much.

Next, Sally McKeag, Member of the PERB Board, Public Employment Relations Board.

Welcome. You may proceed.

MS. McKEAG: Thank you, Chairman.

Good afternoon, Chairman Perata and Members of

the Senate Rules Committee.

It seems like only yesterday since my last appearance before you. Let's say it's good to be back.

My name is Sally McKeag, and I'm pleased to have another opportunity to appear before you as an appointee to the Public Employment Relations Board.

PERB is an independent quasi-judicial board, overseeing the administration of California's public sector collective bargaining laws, encompassing 7,000 employers and over 2 million employees.

Since joining the Board in March of 2005, I have come to greatly appreciate PERB's role in fostering harmonious relations, labor relations, and providing a neutral forum to mediate or adjudicate disputes between the public sector management and public employees.

The dynamics of resolving differences of opinion and finding common ground during the collective bargaining process requires a comprehensive review and analysis on a case-by-case basis. I'm extremely sensitive to the fact that PERB's decisions impact people's lives and livelihoods, and therefore will continue to exercise the necessary due diligence in the deliberation and resolution of the cases before me.

When I last appeared before this distinguished Committee, I made a commitment to approach each case with an open mind, and to administer California's collective bargaining laws in a professional, fair, and consistent manner. I believe my record now reflects that I have lived up to that commitment, and that it demonstrates my neutrality in the deliberation of

unfair practice charges.

Again, it is a privilege to appear here before you today, and I will be happy to entertain any questions you may have.

Thank you.

CHAIRMAN PERATA: Thank you.

Mr. Cedillo.

SENATOR CEDILLO: Well stated, but I am a little concerned.

It's not good form for an agency that we have oversight of to change rules that really undermine the spirit and intent of legislation that we have put forth. I'm talking specifically about AB 1281, I authored it in 2001, and SB 253, which I authored in 2003.

The intent and purpose of those is to facilitate the process of union recognition, eliminate contentious elections, try to create a scenario where this is done in the most efficient and effective way, and respecting the democratic rights and the Constitutional rights of freedom of association.

I have to say to you that the kind of proposed proof of support regulations that were initiated I find contrary to what was the intent of my legislation.

MS. McKEAG: Well, first and foremost, Senator, I would say that the card check is the law of the land, and it is Board's responsibility to enforce and administer that law.

It was -- the genesis of the regulations started when we received -- we had a case in front of us, in addition to some public comment that we received. And the Board's

obligation is to look into any complaints that the Board receives. Obviously, it's the General Counsel's Office to obviously do the appropriate research into those complaints.

Therefore, it was decided to at least recommend proposing some modified regulations. I have to say -- and so we submitted it, obviously, forward to go forth for public review and comment.

I have to say, I was taken aback, and I think the Board was surprised by the overwhelmingly negative reaction to these proposed regulations.

And quite frankly, I do sit up and take notice when we receive a letter from the author of the card check law, basically expressing his displeasure with the regulations, and then also noting that there was also an Assemblywoman there who made a public appearance before the Board as well.

Basically, the bottom line is, the Board listened. The Board heard, and the Board responded. We did not adopt the proposed regs.

And I would like to take this opportunity, Senator, and emphasize to you and to the Members of this Committee, is that it was never the intention of this Board to either circumvent or undermine the current law. It was basically, again, we felt that we were carrying out our obligations as a Board to look into these complaints that were received.

So again, I think it bears repeating that card check is the law of the land, you know, and that the Board is responsible for administering and enforcing the laws of the

State of California.

SENATOR CEDILLO: Thank you. Well stated.

CHAIRMAN PERATA: I have a question about case.

MS. McKEAG: Yes, sir.

CHAIRMAN PERATA: Jerry Brown and I came out of the same place recently, not Atascadero. He's got about 1100, roughly, of the 3400 public attorneys.

In a conversation we had, the disparity between what we're paying our legal staff, and what is being borne in the public marketplace -- forget the private marketplace -- indicates to me that pretty soon, we're going to be bargain basement shopping for lawyers that the state depends upon to operate. It's very disturbing.

And I know they're out of contract right now. They're professionals, so they won't be striking. But morale, as you might expect, is abysmal.

There is a lawsuit which I believe the Attorney General was going to come in as an amicus.

Are you aware of this? Do you have any active role to play here?

MS. McKEAG: I believe there is a case. There was a case in an injunctive relief form, format, which we deliberated on, and we did rule on. They wanted to immediately have -- they wanted to go to the court to sue. Basically, we ruled, you know, against the IR and basically sending them back to the bargaining table.

So, we are aware of it and obviously watching it very closely to what the next steps are going to be.

CHAIRMAN PERATA: That's pretty much the limitation to PERB's role?

MS. McKEAG: If it comes back to us as an unfair practice charge, then of course, then we will do --

CHAIRMAN PERATA: That would be the next step.

MS. McKEAG: We do our -- exercise our due diligence, which is, obviously, reviewing the record; obviously reviewing the facts, the evidence presented.

If it gets up to an administrative hearing, then we will -- and if it obviously is appealed to the Board, then we will do our due diligence of reviewing the case de novo.

And then from there, obviously, there's a deliberation process between the panel members who are assigned to the case. And then we'll go from there.

Then usually the decision is the product of that deliberation.

CHAIRMAN PERATA: Do you have any opinion on what's going on with CCPOA? I'm just kidding.

[Laughter.]

MS. McKEAG: In my job, I'm not allowed to have an opinion. It's whatever the law says.

CHAIRMAN PERATA: Anything from other Members?

Anyone out there?

Welcome.

MR. KEIL: Thank you, Mr. Chair and Members. Steve Keil, California State Association of Counties, here in support of this nomination.

Parenthetically, I'd like to add that we have

very much enjoyed these last couple of years of working with this entire PERB Board. We find them very objective. We don't agree with everything that they decide, which is probably a sign of their objectivity, but they have been very open. They reach out to labor-management individuals in providing statewide training, to improve their resources for access both to technology staff turnaround time.

And we're again here to ask for your support also of this nomination. Thank you.

CHAIRMAN PERATA: Thank you.

Anyone further? Opposition?

SENATOR ASHBURN: Motion.

CHAIRMAN PERATA: Family?

MS. McKEAG: No family, unless dogs are allowed.

CHAIRMAN PERATA: Preferable, believe me.

[Laughter.]

CHAIRMAN PERATA: Call the roll, please.

SECRETARY WEBB: Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Padilla.

SENATOR PADILLA: Aye.

SECRETARY WEBB: Padilla Aye. Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to zero.

CHAIRMAN PERATA: Four-zero, congratulations.

MS. McKEAG: Thank you very much. Thank you,

Senators.

CHAIRMAN PERATA: And finally, David Thorman, the State Architect. Welcome back.

MR. THORMAN: Thank you. It's nice to be back.

CHAIRMAN PERATA: You may proceed.

MR. THORMAN: Senator Perata, Members of the Rules Committee, thank you for the opportunity to speak with you again.

Just for new Members, I am an architect, 40 years of experience nationally and within California, 12 years actually working with construction management firms. And I did work with DSA as a client on many projects. Most of my history and experience has been in K-12 and community college projects in California and nationally.

I've been the State Architect since April of 2005.

You have my response to your 14 questions, so I'm not going to go into any detail on those, but I would like to make five very quick points.

I am implementing the goals that I outlined 18 months ago when I met with you the first time. Some of the ones that I'm most proudest of, there is an academy, DSA Academy, in place. We have educated over 1200 people in the Code, which I think is helping to make things more understandable across the state.

Our recruiting plan is working. Our regional offices have been reorganized. We've opened two satellite offices -- one in Bakersfield, one in Riverside -- in response

to requests from the Legislature and school districts in those areas.

We're implementing the collaborative process. I know we still have a lot of work to do, but I have a good staff, and we're on the right path.

Number two, I'm serious about green. If you'll notice, I added a new goal this time, and that goal is to be grid neutral on all new school construction within the next three-and-a-half years. I think that's achievable. I have started to work with OPSC and other agencies to figure out how we can do that. And I did make nine recommendations in terms of incentives that could lead in this direction.

Number three, I have and continue -- have had and continue to have strong support for access. I'm working with Richard Skaff on a five-year, potential five-year access strategy plan for them. DSA probably does more of the access review than any agency in the state.

Number four, I do have a concern for seismic -- potential seismic events. It was interesting that none of the 14 questions I was asked had to do with seismic, but that's really one of the basic duties of the Division of the State Architect.

I'm also on the Seismic --

CHAIRMAN PERATA: You just can't get good help. California, and you couldn't figure that out.

[Laughter.]

CHAIRMAN PERATA: I'm embarrassed.

MR. THORMAN: Maybe they thought I had it

handled, so they weren't worried about it.

[Laughter.]

CHAIRMAN PERATA: That's what it was.

MR. THORMAN: In any case, I'm now serving on the Seismic Safety Commission, so I'm even more sensitive to the fact that we haven't had a major event in Southern California in over 150 years, and we're due.

I just have two comments on that. One is, please give us continued support for the Field Act. And the second, please encourage the public to be prepared.

And my fifth point, and this has to do with statewide policies, I do believe that there continues to be a need at the statewide level for policies with regard to the design and construction of facilities across the state, not just with K-12 and community colleges, but with the university system, with the California Department of Corrections hospitals, all facilities that have state money.

I thank you for your time. I would appreciate any comments, and I welcome your questions.

CHAIRMAN PERATA: Thank you.

Questions?

SENATOR PADILLA: We had a chance to talk in my office.

I appreciate the goal you have for grid neutral as a goal for all new schools. You say you can achieve that in the next year-and-a-half?

MR. THORMAN: Well, within the current term of the Governor, yes.

It's going to take time to get the necessary legislation, all the pieces in place. I think it could be achieved sooner than that, depending on how quickly I can gather the forces of the different agencies.

SENATOR PADILLA: But that's all based on existing technologies, not technologies projected to be available?

MR. THORMAN: That's based on existing technology and potential incentives.

SENATOR PADILLA: Incentives versus mandates, or a combination?

MR. THORMAN: Pardon?

SENATOR PADILLA: Incentives versus mandates, or a combination.

MR. THORMAN: I think it needs to be a combination, but I think the mandates need to be matched with some -- some form of reimbursement for the additional cost.

I don't think we should burden the districts with additional costs. I think we should find a way to support them.

SENATOR PADILLA: And there's been conversations with the districts already on this?

MR. THORMAN: I have had conversations with the Office of Public School Construction, which funds the bond money in terms of different approaches in this direction.

SENATOR PADILLA: Thank you.

CHAIRMAN PERATA: You don't want to get a feel for what the earthquake situation is in Kern County?

SENATOR ASHBURN: It could happen. Actually, '52

was our last major event.

CHAIRMAN PERATA: You're okay then.

You guys are living on borrowed time. You may want to stay up here.

Anyone like to speak in favor of the nominee?

MR. ADLER: Mr. Chairman and Members, Lee Adler, representing the Structural Engineers.

We're in favor of Mr. Thorman's reappointment. Thank you.

CHAIRMAN PERATA: Thank you.

MR. SKAFF: Mr. Chairman and Members of the Committee, my name is Richard Skaff. I'm here representing my organization, a non-profit, Designing Accessible Communities.

I have a letter I'd like to leave with you from an organization called Coalition of Disability Access Professionals, if I might.

I am here in support of Mr. Thorman's reconfirmation, and mainly for his --

SENATOR CEDILLO: I'm so pleased to have you here in favor of it.

CHAIRMAN PERATA: That alone.

MR. SKAFF: Mr. Thorman has, as was discussed with other members of other boards and commissions being approved for their position today, he's a person who listens and recognizes our community's issues, and has made commitments and actually followed through with those commitments on issues important to our community.

Mr. Chairman and Members, I'd like to very

quickly just say, the support of Mr. Thorman is, I think, complete throughout our community, but there are still issues. And you have asked, Mr. Chairman, for input in the past during other hearings.

We have laws, more in fact than we need, but we have a problem with enforcement and staffing, and in the end, accountability throughout the area of access in the public arena. And I have a list, which I won't belabor you with verbally, because I know it's late in the day, but I'd also like to leave this with you. If you're interested, Mr. Chairman and other Members, these are issues that need discussion.

And Mr. Thorman has made major positive changes to the State Architect's Office and continues to work with us. I look forward to that continued work.

But we have issues that need help from the State Legislature, the Senate and the Assembly, and they're very important. I would ask that you review these.

CHAIRMAN PERATA: Thank you.

MR. SKAFF: Thank you very much.

CHAIRMAN PERATA: You can give those to the Sergeant.

Yes, sir.

MR. DUFFY: Mr. President and Members, Tom Duffy for the Coalition for Adequate School Housing.

We're here in support of David Thorman. We sent a letter on his behalf and identified in that that when he first became the State Architect, he didn't wait for us to call him; he called us to ask about needs of building safe schools in

California.

I can tell you with the diversity of California, Mr. Padilla, this gentleman has looked out for L.A. Unified and its unique needs.

Mr. Ashburn, he's opened up a satellite office in Kern County.

So, there is breadth and depth to his thinking of service. I could go on and tell you a number of things that he's done, but maybe this one thing.

School districts in California are often very suspicious when the state looks into what they're doing. They're not suspicious of David Thorman.

Thank you very much.

CHAIRMAN PERATA: Thank you.

MR. COOKNICK: Mr. Chairman and Members of the Committee, Kurt Cooknick, representing the American Institute of Architects, California Council and the California Building Industry Association today.

This is the second time I've had the pleasure and the honor to support Mr. Thorman's confirmation before you. Once again, for all those reasons that I stated in my letter, we wholeheartedly support him in his endeavors, and have found him to be very responsive to our concerns, the concerns of our members, all for the betterment of California public schools.

And I respectfully urge your confirmation of Mr. Thorman. Thank you.

CHAIRMAN PERATA: Thank you.

MR. WHEELER: Good afternoon. Matt Wheeler,

representing California Building Officials, 500 local county and city, local building departments, pleased to be here in support.

Thank you.

CHAIRMAN PERATA: Thank you.

I have one question. Anybody want to oppose the gentleman?

I believe we talked the first time around about electronic disposition or planned checks.

MR. THORMAN: Electronic plan review.

CHAIRMAN PERATA: Yes. How're we doing on that?

MR. THORMAN: We have systems in place in all four offices. We have staff trained. We have to date probably processed about 180 sets of plans.

We're heading in the right direction. It's not as fast as I'd like, but I hope to be fully electronic, or as close as possible, within the next two years.

CHAIRMAN PERATA: Great, thank you.

Did you run all this way to speak?

MR. SILVA: I'm Ernest Silva on behalf of the Association of California Construction Managers.

Also in support of the nomination.

CHAIRMAN PERATA: Thank you.

SENATOR ASHBURN: Motion.

CHAIRMAN PERATA: Motion to approve. Please call the roll.

SECRETARY WEBB: Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Padilla.

SENATOR PADILLA: Aye.

SECRETARY WEBB: Padilla Aye. Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Four to zero.

CHAIRMAN PERATA: Four-zero, congratulations.

MR. THORMAN: Thank you.

CHAIRMAN PERATA: Keep up the good work.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 4:02 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of September, 2007.

EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

Senate Rules Committee
Appointments

Statement of Goals:

1. *What are your goals as a member of the State Water Resources Control Board? What do you wish to accomplish during your term? How will you measure your success?*

    1. I plan to continue to be a catalyst that creates opportunities for all parties to settle disputes that arise. It is hard to predict when and where this will be appropriate.
    2. While many of the changes outlined in my response to question 2 are ongoing they have not been put into regulation or written policy. I will write a history if you will of these changes and why they evolved. Where appropriate, I will work with my colleagues and staff to codify by formal regulation or guidance.
    3. I am currently working with a group of water right holders, public water agencies, and NGOs on the Russian River permit backlog and AB 2121 process. The intended result of the members is to develop a more efficient and protective process for establishing water rights and fish protection in the watershed. The product of this workgroup will require regulatory and statutory changes. It is too early to determine the exact legislative requirements. The group should have a more definitive product by early next year. The changes contemplated will be of statewide significance. These recommendations will feed into a much larger statewide work group that was established 4 years ago but was unable to reach consensus. I feel confident this time will be more successful because of the urgency of the issues and the fact that the NGOs are significantly engaged.
    4. The Central Valley Regional Water Quality Control Board adopted the initial conditional ag waiver on July 11, 2003. The State Board subsequently upheld it as did the Superior Court in a 98 page opinion. In the initial discussions and following meetings, I made clear that the dischargers would have 5 years to comply with the terms of the conditional waiver. As you know, the terms of this waiver are basically the terms of a Waste Discharge Requirement (WDR) with the exception of some of the enforceability remedies. At my request, the Central Valley Regional Board and State Board are holding a joint meeting in Fresno on September 13. At this meeting we will all be briefed on the successes and failures of the waiver. It is already clear that some watershed groups are in compliance and diligently working with the Regional Board while some groups have done very little. It has always been my intent to require WDRs of those dischargers that have, after a reasonable time, not complied with the terms of the waiver or whose monitoring results have demonstrated a failure to meet the prescribed standards. The resulting permits and requirements, assuming my colleagues and the Regional Board agree, should be issued next year.
    5. I have been working with the Dividing the Waters project (noted below) on the Climate Change seminars for judges. The first was held in Boulder, Colorado last May and focused on modeling globally and in the west. The second workshop at Scripps Institute in San Diego will be in November with a focus on potential legal issues that may result in a water right context. I am

also working with DWR on modeling efforts. The State Board is holding a workshop August 23 to hear presentations from interested parties and begin to formulate a policy.

The measurable results of these efforts will include:

A Water Rights order reflecting climate as an issue, continued public outreach and inclusion of terms recognizing these impacts of climate change in water quality permits. I am currently working with a hearing team on a draft water right order that should be issued in November of this year which will recognize climate change as an issue. I am giving a keynote address in late August to the Association of State and Interstate Water Pollution Control Administrators at their annual meeting which will outline the issues of climate change and water quality from a California perspective. In a similar keynote in October, I will be exploring Water Rights and flow issues to a conference of Mississippi River water supply administrators.

As you can see from my resume, air pollution is an area I have studied academically and as a former member of the San Joaquin and Mountain Counties Air Board. The multi media effect of air deposition of pollutants into water is one of the largest issues we face in storm water regulation and in the field of immerging contaminants. Climate change is also a part of this issue. The Board currently has two petitions before is on air deposition and monitoring requirements from two Regional Boards. This is new ground for water quality regulation under both state and federal law.

2. What *have been your most significant accomplishments as a member of the Board?*

Created an open, public dialogue to better protect, preserve, and restore the waters of California by:

- Redefined the ex parte policy of the State and Regional Boards to allow for more discussion and interaction outside the confines of the board room with legislative staff, the regulated community, NGOs and others.
- Adding pre hearing and settlement conferences to all formal hearings that I oversee to encourage efficiency and settlement.
- Created stakeholder work groups such as the Public Advisory Group for the TMDL programs, Water Transfer Task Force, Water Quality Fee Work Group, etc. These groups brought NGOs and the regulated communities together to discuss and help resolve complex issues from fee increases to water right regulations.
- Required all past water quality and water right orders be posted and searchable on our web page.
- Required all hearing evidence to be posted on our web page within 24 hours of its admission at the hearing.
- Diversifying the upper management of the Board for the first time in its history.

Institutional changes to allow the Board process to be more efficient.

- Instituted regular monthly calls between Regional Board Chairs and State Board Chair and increased frequency of meetings between State and Regional Board Members (Water Quality Control Council).
- Initiated joint meetings and workshops with other boards, departments, and offices including: State Board of Forestry, Fish and Game Commission, California Coastal Commission, Integrated Waste Management Board, Cal EPA Agriculture Work Group, Cal State Air Board, California Energy Commission, Department of Food and Agriculture. These interactions also included jointly attending tours, meetings, and events. I have attached a report former Secretary of Resources Mary Nichols and I authored as a result of a year and a half effort to create a consistent state watershed policy (Attachment 1). As an aside, our Regional Boards are now beginning watershed approaches to permitting and TMDL implementation. The most recent example being the San Francisco Bay Mercury TMDL adopted by the State Board on July 21, 2007.
- Aggressive use of settlements in permits and litigation. I initiated processes where the principle parties and attorneys agreed to settlements in: 1) Oroville FERC relicensing (A billion dollar settlement which is the largest in FERC's history); (2) the Aquatic Pesticide and The Toxic Sediment litigation between the Bay Keepers and State Board which resulted in funding a 2 million dollar study to write sediment objectives and saving years of litigation and concurrent costs; (3) Russian River watershed work group to resolve large water right permit backlogs in the area; and (4) Klamath River FERC settlement process. I have also spent significant amounts of time, particularly in other settlements such as the San Joaquin River, Cargill Salt Ponds, Sierra Conservancy legislation, etc.
- Spent a year developing the State Boards strategic plan. (Attachment 2)
- Development of the most stringent storm water regulatory programs in the country. Partnering with National Resources Defense Council to prevail in numerous legal challenges defending same.
- Creation of an independent Office of Enforcement.

Specific Water Quality Actions

- Regulations that protect the wetlands left uncovered by the US EPA
- Prevailing before the State Supreme Court against Pacific Lumber Company to ensure water quality standards are met.
- Implementing the first program in the nation that requires farmers of 7 million acres of irrigated agricultural land to monitor and develop best management practices protective of water quality.
- Developed standards to protect Areas Special Biological Significance (ASBS)

- Creation of the Clean Beach Initiative to encourage coastal communities to develop physical solutions for water pollution using bond funds with measurable results.
- Successful ramp up of the TMDL program. In 1999 the California TMDL program was virtually non existent. We have developed templates and stakeholder approaches that have allowed a rapid increase in adopted TMDLs; some of which are the most complex created. For example, the recently adopted San Francisco Bay mercury TMDL will create a true watershed permit approach that allows for trading to further reduce loading into the Bay.
- Won a national award for implementing smart growth policies as a part of the State Revolving Fund loan program.

Specific Water Right Actions

- Hold biannual meetings at Mono Lake to ensure the Boards historic public trust order is fully implemented by Los Angeles Department of Water and Power and local interests.
- Created a forum where the directors of the NOAH, Cal DF&G, NFWS, DWR, and the environmental parties could successfully settle the Oroville Reservoir FERC license requirements.
- The officer responsible for the 40 days of hearing and subsequent order adopting the Imperial Irrigation District/ San Diego County Water Authority water transfer. This Order set new standards for water right orders, not only addressing air, endangered species and water quality impacts but protecting the livelihood of residents, farm workers and businesses of the Imperial Valley as well.
- Hearing and orders on the Yuba River that encourage the Yuba River Settlement between Trout Unlimited, American Rivers, DWR, Yuba County Water Agency and the state and federal fish agencies that ends twenty years of litigation and SWRCB hearings.
- Hearing and order declaring the North Gualala River a subterranean stream (WRO 2003-04). This Order furthered the breadth of the Boards authority. The Board has prevailed in all legal challenges.
- Using the Boards hearing and workshop processes to encourage parties to recharge the Carmel and Salinas valley aquifers by using a regional approach and funding.

Association of State and Interstate Water Pollution Administrators (ASIWPCA)

I served as President of the Association of State and Interstate Water Pollution Control Administrators. This is the professional organization of the 50 state water and 8 interstate (such as Lake Tahoe, Ohio River) water pollution administrators. As President and Board member I intimated a collation of discharger and national environmental groups to stop the Bush administration's attempt to eliminate the State Revolving Fund (SRF) which are moneys used to build waste water treatment facilities. Under my leadership ASIWPCA led the charge to prevent

US EPA from exempting federal water projects from Clean Water Act Section 303(d) (TMDL) authority, weakening the CWA Section 404 (wetlands definitions), and publishing the Clean Water Act Thirty Year book and initiated a strategic plan for the Associations (Attachment 3). I have also served on numerous EPA Federal Advisory and International Water Association Advisory Committees for ASIWPCA.

Pacific Forest and Watershed Lands Stewardship Council

The Stewardship Council was created as a result of the Pacific Gas and Electric bankruptcy settlement to recommend how to manage over 170,000 acres of PG&E land and allocate one hundred and twenty million dollars on youth investment projects in northern California. I served as vice president the first year of the Council's existence. The President is Secretary of Resources Mike Chrisman. To start an organization that has an annual income of ten million dollars from whole cloth has required an extensive time commitment. Currently I serve as treasure and executive committee member.

Dividing the Waters

Dividing the Waters is a consortium of federal, state and administrative law Judges from the Western States that specialize in water cases. I have been actively involved as both participant and planner. Three years ago I organized a one and a half day course on the Clean Water Act for water judges. I also worked symposia on veracity of in stream flow modeling and climate change.

State and Regional Boards' Relationship:

3. *In your view, what role should the state board play in relation to the regional boards? Do you believe the state board should have more oversight over the regional boards? In your view, what role should the state board play in relation to the regional boards?*

- The State Water Board's role is to set statewide water quality policy, consistent with the Porter-Cologne Water Quality Control Act. In addition to setting policy, the State Water Board must oversee the Regional Water Boards to assure that they follow the Porter-Cologne Act and consistently comply with statewide water quality policy. A large part of the State Water Board's responsibility in this regard is to provide appropriate guidance to the Regional Water Boards. This guidance comes through amendments to formally adopted policies, Water Quality Coordinating Committee meetings, coordinated staff training, staff roundtables on specific subjects, and where necessary, the issuance of orders after review of Regional Water Board actions through the petition process. In all these respects, the State Water Board should tailor its actions to eliminate inappropriate inconsistencies among the regional water boards.

- An important role for the State Water Board is to help foster consistency. If different Regional Water Boards' approaches to water quality regulation are creating unjustifiable inequities in the regulated community, the State Water Board should address those inconsistencies. The State Water Board may find it necessary to adopt a specific state policy to bring about consistency.

- The State Water Board's role is to work effectively with the Regional Water Boards to ensure the highest water quality that is reasonable. At times, the most effective approach will be to take full advantage of the individual strengths of particular Regional Water Boards. Ultimately, the State Water Board must be prepared to act decisively and boldly to establish state water quality policy when the circumstances warrant or when a cooperative regional approach does not work to address a pressing water quality problem of statewide concern.

- In 1999, I had the Board institute a policy of taking at least one petition of a Regional Board action up per year. The petitions are chosen because of state wide import in policy or law. This process allows the Board to hold a full evidentiary hearing and modify the original order to conform to the evidence and interpretation of law. The first such petition was the Los Angeles Regional Board's storm water permit for Los Angeles city in 1999. The State Board held a 3 day hearing in Torrance. The resulting order strengthened a permit to better withstand actions filed by the dischargers. It later became the model for all subsequent storm water permits state wide.

Do you believe the state board should play a greater role in coordinating policies among the regional boards to ensure consistency among regional boards and accountability for water quality programs?

- Yes, with the recognition that there are legitimate reasons for certain inconsistencies. The Legislature has provided the State Water Board with powerful tools to develop and implement consistent state policy for water quality control. Those state policies are a form of rulemaking and they can provide a consistent framework for the Regional Water Boards' actions. Those same policies can also identify clear benchmarks that will provide consistency and accountability on water quality improvements. Making full use of the planning and policy tools in the Porter-Cologne Act will allow the State Water Board to increase consistency among the Regional Water Boards, while also setting identifiable performance measures to protect and improve water quality

- Consistency should not always require that every Regional Water Board take exactly the same approach to water quality problems. Another advantage of the Regional Water Board system is that different regions may serve as laboratories to test different approaches to solving water quality problems. So long as these approaches are consistent with overarching policy and do not place disproportionate burdens on persons in different regions, there can be a tremendous benefit. One of the State Water Board's roles should be to encourage

innovative problem-solving in the regions. If necessary, the State Water Board can take appropriate action to ensure a particular approach, proved to be successful on one region, becomes the statewide standard. In all cases, the State Water Board should focus on efforts that achieve measurable improvements in water quality.

4. *How often do you visit the two regional boards, to which you are the liaison? How do you assist these two regional boards in carrying out their duties?*

   I attend the Regional Board meetings in Regions 6 and 7 (Lahontan and Colorado Boards) when they do not conflict with State Board hearings or meeting. Over the past 8 years I have served as liaison to all nine Regional Boards. I have extensively toured all regions with the Regional Board staff, members, and stakeholders. There is no better way to understand an issue than to have seen the problem on the ground. I have also been convinced that we as State Board members can be most effective if we spend time with individual Regional Board members in less formal situations such as breakfast or dinner where we can answer questions and provide mentorship on how to approach issues, interact with stakeholders, etc. As you know, there is no substitute for one on one communication.

5. *Do you think there should be a legal reporting relationship between the executive officers of the regional boards and the state board's executive director? If so, how should it operate?*

   Yes. This has continued to be a problem. AB 1727 (Aghazarian) was sponsored by the State Water Board, and would have: (1) required the State Water Board to appoint the regional water board Executive Officers (E.O.s) and have the E.O.s report to the State Water Board Executive Director; (2) altered the State Water Board Executive Director's salary to be commensurate with additional duties; (3) reduced regional water board membership from nine members to seven; (4) made the process of selecting chairpersons and vice chairpersons at the regional water boards the same as the process used for the State Water Board; (5) delegated waste discharge permitting authority to the regional water board E.O.s; and (6) made E.O. permit decisions appealable to the State Water Board Executive Director rather than the regional water boards. This bill has been held in abeyance pending the results of the current strategic planning process.

Groundwater Protection:

6. *Do you believe the state board is doing an adequate job in protecting and managing groundwater?*

   Yes, given the statutory framework that we are legally mandated to enforce and the current level of staff and funding provided to do so.

- California law does not give the Water Boards authority to manage groundwater. Groundwater management is a local issue unless the groundwater basin has been adjudicated. The Water Board's role is to set water quality standards via the Basin Plans. This is then the guidance used at the local level to develop groundwater management plans.

- Each Regional Water Board basin plan includes a groundwater quality component that sets standards/water quality objectives for groundwater. Basin plans also include prohibitions of certain waste discharges, such as septic tanks in areas with significant problems. The regulatory actions that implement the basin plans include issuance of waste discharge requirements (WDRs) for discharges to land (e.g., landfills, municipal and industrial waste treatment ponds) and cleanup of contaminant sites (e.g., discharges without requirements such as spills and leaks). The first WDRs for landfills were issued in the 1940s. Continued regulation has resulted in over five thousand currently active WDRs for discharges of waste to land. The issuance of WDRs is supported by over 140 staff.

- Discharges of waste that were never authorized are subject to cleanup or abatement. The board cleanup program has closed over 30,000 underground storage tank (UST) sites with 13,000 UST sites under investigation and cleanup, and closed 750 non-petroleum contaminant sites with 1,800 sites under investigation and cleanup. The contaminant site cleanup effort is supported by about 450 staff at the Water Boards.

- The State Water Boards Underground Storage Tank Cleanup Program reimburses over $200 million annually for investigation and cleanup at UST sites.

- In addition to groundwater monitoring and cleanup, State Water Board regulations require WDRs to include containment of waste and specific groundwater monitoring for higher threat waste discharges.

- The State Water Board's UST Leak Prevention Program is a national model in setting standards for tank design including secondary containment. Several of the UST Leak Prevention Program's recent successes were adopted by Congress in this year's Energy bill. The State Water Board sponsored legislation requiring the most environmentally protective design in the nation for new USTs.

- The State Water Board is overseeing perchlorate investigations and cleanup at priority military facilities.

- Despite the existing regulatory program, groundwater has been significantly degraded throughout the state as a result of many decades of human activity.

    - Irrigated agriculture, through leaching of salts, fertilizer and pesticides has resulted in widespread degradation of groundwater, particularly in the San Joaquin Valley groundwater basins. While the impacts of fertilizers and

pesticides can be lessened with better farm management practices, salinity will have to be addressed on a regional basis.

- Percolation of salts and nitrogen at confined animal facilities (e.g., dairies, feedlots) has resulted in groundwater contamination.

- Releases of commercial and industrial contaminants from thousands of former businesses (e.g., solvents from dry cleaners, perchlorate from defense and other industrial facilities, MTBE from petroleum USTs) have resulted in groundwater contamination, particularly in urban areas.

- Discharges from regulated wastewater treatment and disposal facilities (e.g., publicly owned treatment works, food processing) have resulted in downward percolation of salts, nitrogen and organic compounds to groundwater.

- Of the estimated 1.2 million parcels with septic tank systems, half the parcels have onsite domestic wells for water supply. The minimum required distance from an onsite domestic well to a septic tank system is only 100 feet. It is important to note that a properly operating septic tank system will still release soluble pollutants resistant to degradation (e.g., salts, nitrates, pharmaceuticals, personal care products) that will contribute to groundwater degradation.

- Evidence of groundwater contamination can be seen in the thousands of public supply wells that have been taken out of production by urban water supply agencies in the last 25 years. Additionally, of the 900 private domestic wells tested by the State Board over 25 percent tested positive for total coliform bacteria. In Tulare County, over 40 percent of the 181 domestic wells tested were above the drinking water standard for nitrate.

7. *Should the State Board protect groundwater beyond the current monitoring effort? How would you propose to fund such efforts?*

   Yes. Unfortunately there are significant financial, technical, and often institutional impediments to doing much more than minimizing to the extent practicable the rate of groundwater degradation.

   - The Water Boards' largest program is groundwater quality protection supported by its ambient monitoring and water quality control planning (basin planning) functions.

   - Successful protection of groundwater has typically required waste containment as is required at landfills. Waste containment at many other types of facilities currently discharging to ground may not be an economically feasible strategy.

- Successful cleanup of contaminated sites has required sufficient resources either from financially capable responsible parties or, in the case of petroleum USTs, from the UST Cleanup Fund. However, as mentioned above, there are thousands of contaminated sites at former businesses without financially capable responsible parties to conduct site investigation and cleanup. The funding required would be significant. Attempts to establish adequate funding sources have failed.

- The Central Valley Board is in the initial stages of developing an amendment to their basin plan to address salts. The State Water Board will consider what policy or other actions it should take to protect groundwater quality from the accumulation of salts. Any large scale implementation efforts will likely require significant funding from public and private sectors.

- The State Water Board anticipates adoption of regulations for discharges from septic tank systems in 2008. The draft regulations proposed will not eliminate the impacts of septic tank systems but will lessen their effects.

Sacramento -- San Joaquin Delta:

8. *In light of these recent developments, how is the state board working with other state agencies to manage the Delta?*

   I was a significant drafter of the attached letter dated July 19, 2007, to Senator Steinberg (Attachment 4). This letter reflects my personal view as well. Other actions the Board are discussed below:

   - The Pelagic Organism Decline (POD) was initially identified as a result of long-term monitoring conducted in response to requirements first imposed by the State Water Board in the 1970s. The State Water Board continues to participate in interagency decision-making in groups such as: (1) the Interagency Ecological Program, which directs and evaluates scientific studies on Delta ecological resources and (2) various California Bay-Delta Authority activities, such as the Water Operations Management Team and the CalFED Operations Group to assist in evaluating real-time water project operational decisions. In addition, in response to the POD, the Water Boards have been working closely with the Department of Water Resources (DWR), the Department of Fish and Game (DFG), the University of California (UC) at Davis, and the California Department of Pesticide Regulation to identify conditions, specifically water quality and flow conditions, in the Delta that may be adversely affecting Delta smelt and other pelagic organisms. Lastly, the State Water Board has held two workshops, one in March 2007 and one in June 2007 to hear information from state agencies and other stakeholders regarding the POD.

   - Since 2005, UC Davis has conducted toxicity screening of waters in the Delta and Suisun Bay as part of the Interagency Ecological Program's studies of the role of contaminants in the POD. Studies in 2005 and 2006 focused on the summer

months when juvenile Delta smelt are present in the Delta. To better characterize toxicity during the smelt spawning period, bi-weekly toxicity screening was initiated in January 2007. Preliminary evidence suggests potential toxicity in the Delta this winter and spring in locations where Delta smelt were spawning this year. There is no evidence of direct toxicity to the Delta smelt. However, there could be effects on their food species.

- The screening tests suggested organophosphate (OP) pesticides or pyrethroid pesticides were potential causes of the toxicity; however, follow-up studies were inconclusive. Chemical analyses either detected no pesticides, or the concentrations detected were not high enough to cause toxicity to the test species. The Water Boards were notified of these studies in late May, at least two months after the toxicity was detected. As a result, there was no opportunity to recommend immediate follow-up actions to determine the potential toxicants or their sources. The Water Boards are working with other agencies to develop communication and action plans that outline immediate actions that should be taken when toxicity is detected. Additionally, at the suggestion of the Water Boards, UC Davis researchers are collecting additional samples upstream of the toxic sites in an attempt to identify the sources and causes of toxicity. They have also begun toxicity screening with hatchery-spawned Delta smelt.

- The Water Boards also reviewed data from several sources to determine whether other monitoring programs detected toxicity or pesticides during the winter-spring 2007 time period. Data sources include the Sacramento River Watershed Program, the Irrigated Lands Program, Sacramento Area Coordinated Monitoring Program, City of Stockton Stormwater Program, and Department of Pesticide Regulation Environmental Monitoring Program. The data rarely showed detectable organophosphate (OP) pesticides in the Sacramento River, and when OP pesticides were detected, they were at levels that are not expected to cause toxicity to test organisms.

- There is less data available for pyrethroid pesticides in the Sacramento River because recent studies have focused on areas closer to potential sources, such as urban and agricultural drains. Researchers agree that due to the chemical properties of pyrethroids, widespread water column toxicity from pyrethroids in the Sacramento River and Delta is unlikely. Nevertheless, the Water Boards have also been in contact with the Department of Pesticide Regulation to determine improved opportunities for pesticide sampling in Delta water bodies and improved management controls through County Agricultural Commissioners.

- In regard to flow issues, many Delta water diverters are not required to have a water right from the State Water Board and are exempt from requirements to report water diversion and use to the State Water Board. However, the DFG has identified the location of numerous Delta diverters while sampling in the Delta over the past several years. At the time that the DWR shut down Delta pumping, the State Water Board provided the DFG with names and addresses of known

water diverters in the Delta so that the DFG could send out a letter on June 1 requesting diverters "to voluntarily cease or substantially reduce diversion from south delta channels..." The DFG identified other Delta water users not previously known to the Water Boards.

- The State Water Board sent a letter on July 13 to these and other diverters in the Delta and on Delta tributaries requesting information on their diversions and to determine if they voluntarily ceased diversions in response to the DFG letter. The State Water Board letter also asked diverters if: (1) they intended to implement measures this year to reduce or curtail diversion in order to conserve water, or to protect Delta smelt; (2) their diversion is screened for the protection of aquatic resources; and (3) their diversion is equipped with a flow measuring device. The letter also asked if the recipient had comments or recommendations regarding Delta smelt or and any information regarding unauthorized water diversions.

- The State Water Board is working with DFG to map screened and unscreened Delta diversions. Similarly, the State Water Board and DWR are working together to map historic points of diversion and water delivery systems as identified in the State Water Board's historic documents. Using this information, and relying in part on new functionality that will be available in September as a result of the Water Board's integrated water right/water quality management system, the State Water Board will commence to identify related Delta diversions and Delta discharges. Once mapped, this information can be used to identify whether integrated regional opportunities exist to improve the timing and method of Delta diversions and discharges to improve Delta conditions for fish and other beneficial uses.

- In its regulatory capacity, the State Water Board continues to oversee the water right permits held by DWR and the federal government. The State Water Board will continue to review coordinated water project operations on a real time basis to identify and implement opportunities to protect Delta smelt and other organisms while also protecting other water uses.

- Although investigations into the cause of the Delta species decline focused on three major categories influencing fish abundance: physical and chemical habitat (defined as salinity, turbidity, and contaminants), population loss (through predation or entrainment), and food availability, the relative importance and effect of each suspected cause is not well understood. The State Water Board has entered into an interagency agreement with researchers at UC Davis, including Dr. Peter Moyle, to advise the Water Board on emergency actions it should take in the face of this uncertainty.

- The State Water Board will continue its heightened coordination with state and other agencies so that it can promptly respond to any new information as it is developed. The State Water Board will also use emerging information to assist in development of other short and long-term water quality control actions.

What role will your board play in the short term?

- The State Water Board seeks first to work cooperatively with other stakeholders as described above to establish Delta improvements. A cooperative approach is sometimes the fastest, most cost-efficient way to proceed. However, if cooperative efforts are not adequate, the Water Boards can exercise the regulatory powers contained in the Water Code and consistent with the California Constitution. In the short term, if grounds exist and there is adequate evidence, the State Water Board can consider administrative water quality and water right enforcement actions, including cease and desist orders, clean up and abatement orders, and civil liability penalties, or can seek injunctive relief in court to protect Delta fisheries. If there is not an adequate basis to take an enforcement action directly, but new information suggests that water quality and water right permits are not sufficiently conditioned, or that new water quality permits are needed, to protect species, the Water Boards could consider permit terms and conditions to provide a higher level of protection.

What is your view of how the Delta should be managed for the long term?

- In the long term, the Delta should be managed to protect beneficial uses to provide the highest benefit to Californians. The State Water Board has the legal authority and obligation to balance these uses, taking into consideration legal protections and societal values. Ultimately, a rebalancing will be required in response to changing circumstances that result from climate change, the water supply needs of an increasing population, and technological improvements. It will not be possible to protect beneficial uses in the same way that they are protected today, especially since continuing to protect one use can adversely affect the protection of other competing uses. This rebalancing will drive Californians to seek new infrastructure, both in terms of water supply project facilities and water quality treatment.

9. *The Porter-Cologne Act provides the board with the authority to protect the beneficial uses of water in the Delta. How is the board using this authority beyond setting salinity standards?*

- The Porter Cologne Water Quality Act directs both the State's water quality planning activities and core regulatory activities, such as permitting and enforcement.

Planning:

- The State Water Board sets flow and flow-related objectives for the Delta, and reviews and approves other water quality objectives adopted by the Regional Boards. Porter-Cologne envisions a continuing planning and implementation

process, with regular review and revision of water quality plans after routine assessment of how successful permitting activities have been in protecting beneficial uses of water. California is unique in the United States in integrating water quality and water supply by investing both water quality and water right regulatory authority in one agency. The Water Boards issue both water right and water quality permits to implement the objectives in water quality control plans, including the Bay-Delta plan.

- The State Water Board adopted the most recent Bay-Delta Water Quality Control Plan in December 2006. The Plan became effective upon approval by the Office of Administrative Law in June 2007. This plan includes objectives for Sacramento and San Joaquin River flows, Delta outflow, Delta inflow and outflow relationships, salinity at numerous Delta locations, dissolved oxygen in the San Joaquin River, and operating criteria that affect physical structures in the Delta and Suisun Marsh. This plan identifies four emerging issues in the Delta: the POD; climate change; Delta and Central Valley salinity; and San Joaquin River flows. The State Water Board is conducting a series of workshops on these emerging issues, including a January 2007 workshop on salinity and a series of follow up meetings, and the POD workshops held in March and June 2007. Information obtained in these workshops will be used to identify changes needed in flow and water quality objectives to protect beneficial uses, and the program of implementation needed to achieve these objectives. Information from these workshops will also be used to identify interim measures needed to protect beneficial uses and the public trust, including enforcement, and to identify whether changes in the plan objectives are required.

TMDLs:

- The Basin Plan for the Central Valley includes objectives for other water quality parameters such as toxic compounds within the legal Delta as well as salinity and other objectives for Delta tributaries that are outside of the legal Delta. The Water Boards adopt Total Maximum Daily Load (TMDLs) allocations for impaired water bodies. For the Delta and its tributaries, the Water Boards have adopted TMDLs for pollutants such as pesticides, salinity, boron, selenium, as well as for parameters such as dissolved oxygen.

- The Water Boards have been concerned about OP and other pesticides in Delta water since the late 1980s. In the early 1990s, toxic concentrations of OP pesticides were present in the rivers and Delta channels for several days at a time. In response, the Water Boards developed and adopted TMDLs to reduce concentrations of the OP pesticides diazinon and chlorpyrifos in the Delta and tributaries. The OP pesticide TMDLs also include provisions to ensure that replacement pesticides, such as pyrethroids, do not become a problem. Urban uses of the OP pesticides have been phased out, the overall agricultural use of diazinon and chlorpyrifos has been significantly reduced, and new label restrictions have been adopted to reduce the amount of pesticides that enter

waterways from agricultural operations. As a result of the TMDLs and associated activities, the concentration of diazinon and chlorpyrifos in the Delta and upstream tributaries has decreased dramatically.

- Because pesticide pollution occurs as the result of discharges, implementation of pesticide TMDLs involved actions related to discharges. However, addressing issues relating to chemical properties requires other strategies. Near Stockton, the San Joaquin River is impaired for oxygen; this impairment affects salmon migration. At times, no dissolved oxygen has been detected. The Water Boards' TMDL for dissolved oxygen on the San Joaquin River at Stockton is being implemented through all water quality regulatory actions available under both Porter-Cologne and the federal Clean Water Act, including point discharge permits, stormwater permits, and water quality certifications for dredging activities. Artificial aeration of the river has been required as an offset of unmitigable oxygen demand from some projects. Those re-aeration facilities are all in operation. If these actions should prove unsuccessful, the State Water Board could consider revising water right permits and certain water quality certifications to provide sufficient additional flows to improve dissolved oxygen.

Limits on Point Source Discharges:

- Discharge permits for the wastewater treatment plants in the heart of the Delta adopted over the last decade have included much more stringent discharge conditions recognizing the critical conditions of the Delta, including limited dilution, receiving water toxicity, low dissolved oxygen, and the presence of endangered species. These treatment plants have either completed major upgrades to include tertiary filtration and nitrification to remove ammonia, or are nearing completion of such upgrades. Stockton, for instance, is in startup of a major expansion that includes upgrades to address toxicity and dissolved oxygen issues.

Agricultural Wastewater Discharges:

- The Water Boards have been working with coalitions through the Irrigated Lands Program to identify constituents of concern through monitoring, identification of sources of pollutants, and development and implementation of corrective action when needed. The State Board should issue WDRs to all dischargers that are not currently in compliance with the conditional waiver. The State Board and the Central Valley Regional Board are holding a joint meeting September 13, 2007 to consider this direction.

Water Right Actions:

- In 2000, the State Water Board revised the water right permits of a number of water diverters from the Delta and its tributaries to implement flow objectives it adopted in its 1995 Bay-Delta Water Quality Control Plan. The State Water

Board also implemented salinity objectives through requirements imposed on the State and Federal Water Projects. The State Water Board monitors water diversions to ensure compliance with water right permit conditions. For instance, the State Water Board is currently reviewing circumstances associated with an exceedence of southern Delta salinity objectives to determine if water diversions worsened salinities.

- In 2000, the State Water Board also amended numerous water right permits to provide for a 12-year study of the relative effects of tributary flow and export pumping on San Joaquin River salmon smolt survival. The State Water Board continues to review data collected as part of this study. Although not directly related to either flow or exports, the Water Boards were notified in May 2007 that juvenile salmon released in the San Joaquin River in May 2007 for the study appeared to have died near the City of Stockton. There are several possible explanations for the observed mortality, including predation and toxic discharges. In response to this report, the Water Boards inspected the Stockton Wastewater Control Facility on May 22, 2007, to evaluate if effluent discharges might have caused or contributed to the reported incident. The inspection did not reveal any strong evidence to link the salmon mortality with Stockton's discharge. In addition, UC Davis researchers collected samples from the area and screened them for toxicity and found no toxicity to fish or invertebrate test organisms. The Water Boards have not been able to determine why the tagged salmon apparently died at this location, but the event does not appear to have been caused by toxicity in the Stockton discharge.

- Lastly, the State Water Board continues to process water right actions to improve Delta conditions. On June 8, 2007, Merced Irrigation District filed a Water Right Petition for Temporary Urgency Change with the State Water Board to temporarily amend its water right to include the Delta. This was done to facilitate a transfer of 850 cubic feet per second of water for a period of several days to increase San Joaquin River flows. The purpose of the transfer was to maintain net positive outflow flow in Old and Middle Rivers in the Delta to protect Delta smelt so that the US Bureau of Reclamation could divert low volumes of water at its facilities near Tracy to meet health and safety needs. The State Water Board reviewed and approved the request that same day. On June 28, 2007, the State Water Board received an additional petition for temporary change from Merced Irrigation District requesting the transfer of up to 25,000 acre-feet of water to provide instream flows for fishery protection within the lower San Joaquin River to the Delta between October and December of 2007. The State Water Board is in the process of providing public notice of this petition.

Strategic Plan:

10. *Please describe some of the priorities that you believe should be included in the strategic plan.*

See answers to Questions 1 and 2. As a major drafter of the current strategic plan, I believe with the addition of Climate Change, it is still a valid plan. The following summarizes the current process and consensus of stakeholder input.

From input received through the recent outreach efforts in our strategic plan update process, stakeholders have identified Basin Plan Updates, TMDL development, Water Rights, Water Recycling/Reuse, Storm Water and further development of an Integrated Watershed Approach as priorities. To summarize this input:

- Basin Plan Updates should use collaborative and leveraged partnerships (such as the California Water Plan and Santa Ana Watershed Project Authority models) to coordinate regional information. Basin plans should be revised with current information to identify appropriate beneficial uses and both numeric and narrative water quality objectives; the resulting basin plan standards would be applied in permits. Other suggestions also included a streamlined amendment process, supporting legislation for broad-based funding, encouragement of innovation and risk-taking, better use of science, and better public outreach.

- TMDL efforts should focus on all sources of contamination and promote the adoption of a watershed approach for implementation of solutions. Analyses should consider cost/benefit assessments (to determine the net benefit) and the role of offsets. Clear performance measures and adaptive management strategies would guide compliance to improve source control and voluntary compliance.

  The TMDL program should develop Best Management Practices (BMPs), improve strategies for monitoring and reducing non-point source loads, and expedite restoration permits. Other suggestions included a continued focus on geographic priorities; development of monitoring programs that address TMDL effectiveness, cost effectiveness of monitoring, and assessment of beneficial uses (beyond monitoring of pollutants).

- Water Rights efforts need to focus on improving workflows for new applications through better use of watershed-scale programmatic Environmental Impact Reports and water availability analyses that support site-specific permit analysis (e.g. Russian River, stock ponds). Approaches to reducing the current backlog are a high priority and suggestions included the use of third-party outsourcing, with appeals handled by administrative law judges or special hearing officers.

  Enhanced training for staff is very important and many suggestions centered around an expedited permitting process that integrates the requirements associated with the California Environmental Quality Act (CEQA), Endangered Species Act (ESA), and public trust doctrine. The funding issue for this program is recognized as critical and some participants suggested that it could be resolved through the use of non-user fees.

- Water Recycling/Reuse approaches are critical needs for the Water Boards and should address salinity issues including research on salinity disposal; permitting of brine lines; a mass balance for salinity; and support for statewide source control (e.g. water softeners, etc.). Disincentives were recommended for irrigating with potable water, with incentives created for purple pipes (including legislation requiring purple pipes in new development). Attitudes regarding water reuse are recognized to be critical in developing these approaches.

- Stormwater approaches should shift from addressing runoff to focusing on infiltration and recharge. The Water Boards are now working to develop more quantifiable measures and are looking at integrated resource benefits. A cost balance approach could include an economic analysis/balance, full accounting of costs and benefits, and a feasibility assessment.

  In taking a comprehensive approach to stormwater, a consistent statewide policy should be developed. Support of research and the development of design-appropriate technology and bio-engineering strategies are critical as well.

- An Integrated Watershed Approach was consistently emphasized throughout the Water Boards' Strategic Planning input sessions. This approach would address return flows, closed systems (multi-user systems approach), groundwater recharge, and in-stream flows. It would recognize hydrologic modification (e.g. how creek channelization modifies beneficial uses) and integrate large areas of federally-owned lands.

  An integrated, watershed approach would provide a consolidated and coordinated framework to increase efficient use of resources across the range of Water Board programs. This approach would need to be defined by drawing upon other models, examples, and structures (including the Watershed Management Initiative) and by identifying opportunities to integrate other state, federal and local agencies and programs.

11. *When the state board prepares the annual budgets for itself and the regional boards, what is the basis for that budgeting? Is it the 2001 strategic plan? If not, what is the basis?*

The State Board budget is extremely complex. It would be extremely helpful for the Board to have more flexibility to move money between programs. If the Board had this ability we could, for example, transfer funds and positions to the Bay Delta unit in this time of obvious crisis. Under current law we must maintain a budgetary firewall between water rights and water quality divisions.

The board takes into account the 2001 strategic plan, as well as other priorities that may come up, at the time the annual budget is prepared as well as programs adopted by the Legislature and signed into law by the Governor. For example over the past three years

the board's budget has:

- Added forty new staff to address Brownfield clean up sites throughout the state, which is a key strategic project in support of strategic plan goal #3: "Groundwater is safe for drinking and other beneficial uses."

- Added six additional staff and contract funds to help improve the efficiency of our water rights program to reduce our backlog and update our water rights information management system. This is a key strategic project to improve water rights processing supporting strategic plan goal #4: "Water resources are fairly and equitably used and allocated consistent with public trust."

- Added $4.5 million and a one time augmentation of $4 million for surface water ambient monitoring to enhance all of our key strategic projects in support of strategic goal #6: "Water quality is comprehensively measured to evaluate protection and restoration efforts."

The following summary gives a better glimpse of these challenges.

Per the 2007-2008 Proposed Governor's Budget, the Water Board's Budget is distributed as follows:

General Fund ($39.1 million):
The General Fund is the principal fund for state government and consists of all money received in the Treasury that is not required by law to be credited to any other fund.

– Total Maximum Daily Load Program	$12.5 million
– Water Quality Planning (Basin Plans)	$ 5.6 million
– Timber-Forest Activities	$ 3.3 million
– Agricultural Waivers	$ 1.8 million
– Water Rights Program	$ 3.8 million
– Leviathan Mine	$ 1.7 million
– UST	$ 3.5 million
– SLIC	$ 2.0 million
– CALFED	$ .8 million
– Various Other Programs	$ 4.1 million

Waste Discharge Permit Fund (WDPF) ($67.8 million):
The Waste Discharge Permit Fund is a depository for fees collected from wastewater dischargers for use only in carrying out water quality control laws.

– NPDES	$14.2 million
– Stormwater	$13.8 million
– 401 Certification	$ 2.4 million
– Waste Discharge Requirements	$12.2 million
– Dairies	$ 1.2 million
– Landfills	$ 5.3 million

- Agricultural Waivers $ .4 million
- Enforcement $ 4.2 million
- Water Quality Monitoring (Surface and Groundwater) $12.2 million
- Water Quality Planning (Basin Plans) $ 1.0 million
- Fee Unit $ .5 million
- Various Other Programs $ .4 million

Integrated Waste Management Account (IWMA) ($6 million):
Chapter 1095, Statutes of 1989 created the Integrated Waste Management Account within the Solid Waste Management Fund as a depository for tipping fees authorized to be collected pursuant to Section 48000 of the Public Resources Code. The use is only for our regulatory work in existing landfills.

- Landfills $ 6.0 million

Underground Storage Tank Cleanup Fund (USTCF) ($40.2 million in staff and $238.6 in claims):
The primary purpose of this fund is to provide financial assistance to the owners and operators of USTs containing petroleum to remediate conditions caused by leaking USTs; reimburse for third party damage and liability; and assist in meeting financial responsibility requirements under federal law. Money from the fund can also be used for the Local Oversight Program; cleanup of emergency, abandoned and recalcitrant UST sites; and program administration.

- USTCF Program $ 17.7 million
- USTCF Claims $238.6 million
- Leaking Underground Storage Tanks (UST) $ 22.5 million

Water Rights Fund (WRF) ($6.9 million):
This fund was created to deposit all fees, expenses, and penalties collected by the Water Board (board) or the State Board of Equalization for Water Rights related program activities.

- Permits $ .8 million
- Licenses $ 2.1 million
- Bay-Delta $ .7 million
- Enforcement $ .8 million
- Various Other Programs $ 2.5 million

Bond Funds-Local Assistance ($348.6 million):
Bond funds are created for specific uses depending on the language included in each Bond Act. These funds are typically used for grants and loans to various entities.

- 1996 Bond (Prop 204) $ 2.5 million
- 2000 Bond (Prop 13) $ 11.5 million
- Proposition 50 $122.3 million
- Proposition 84 $111.4 million
- SRF/Other Bonds/Local Assistance $100.9 million

Special Funds ($38.7 million):
These funds are collected and used for specific program areas, some are cost recovery and others have legislation associated with them to specify their allowable uses.

- Watershed Management Initiative $ 1.5 million
- Mono Lake $ .2 million
- Solar Evaporators $ .2 million
- Spills, Leaks, Investigations, Cleanups $29.5 million
- Unified Program Administration $ .6 million
- Other Special Funds $ 6.7 million

Federal Funds ($38.6 million):
Chapter 1284, Statutes of 1978 created this fund for the deposit of all moneys received by the state from the federal government where the expenditure is administered through or under the direction of any state agency. The purpose of this fund is to provide better accountability of the receipts and expenditures of federal funds that are received by the state. Federal funds are restricted to the conditions of each federal grant agreement.

- Navy Cost Recovery Program $ 3.1 million
- Federal Leaking UST Program $ 3.3 million
- Federal 319H Program (nonpoint source) $16.0 million
- Water Quality Monitoring $ 4.5 million
- Other Federal Grants $ .5 million
- Available authority for additional Federal Grants $11.2 million

Reimbursements ($10 million):
The Department of Finance created fictitious funds for budgetary purposes only. Reimbursements (0995) is used to capture totals for reimbursements as a funding source. This is not a fund in the State Treasury but is used in the schedule of appropriation for reimbursements.

- CalFED $ 1.0 million
- Operator Certification Program $ .5 million
- Department of Defense $ 3.4 million
- Other reimbursements $ 1.8 million
- Available authority for additional reimbursements $ 3.3 million

Emerging Contaminants:

12. *How does the Board address potential water quality problems created by emerging contaminants?*

- Under water quality laws, the State Water Board promulgates water quality standards to protect "beneficial uses" designated by Regional Water Boards in their Basin Plans, such as municipal water supply and aquatic life protection.

- Water quality standards for surface waters currently focus on specific chemicals, the USEPA-designated 129 "priority pollutants." The State Water Board *Policy for Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* establishes a standardized approach for permitting discharges of these toxic pollutants to non-ocean surface waters in a manner that promotes statewide consistency

- Emerging contaminants were unrecognized as potential threats to water quality when the "priority pollutant" list was being developed 30 years ago and in 1992 when the National Toxics Rule was promulgated.

- Emerging contaminants are not really "emerging." Some of them have been in the environment for a while, but we now have the ability to detect and measure them at extremely low levels. What is emerging is our understanding of the significance of their presence in the environment.

- Not a lot is known about the effects of many pharmaceuticals in the water environment on aquatic life. The Water Board is participating in research and partnering with other agencies and groups to try and identify what the potential threats are and what actions should be taken to address them.

- The main focus on pharmaceuticals has been on wastewater treatment plants, especially in regards to effluent dominated water bodies. However another major source of pharmaceuticals is agriculture. Dairy farms, beef cattle feed lots, poultry operations, and aquaculture are all large consumers of commercial pharmaceuticals and waste from these operations is often directly disposed of into the environment with very little or no treatment.

- The main concern to date has been endocrine disruption and the feminization of fish. The highest likely hood of this effect is in effluent dominated water bodies. However, it should be noted that we are still attempting to control some known conventional pollutants in these effluent dominated water bodies as well, such as NDMA , which stands for N-nitrosodimethyl amine, a toxic, carcinogenic, mutagenic compound, that occurs or is used in the manufacture of rocket fuels and has been found to be an environmental contaminant.

- An alternative to treatment is to seek source control or a pollution prevention approach.

- The challenge facing the State Water Board and its Cal/EPA sister agencies is where to place the emphasis to minimize the effects of these chemicals.

- Possible opportunities to join with other regulatory agencies to develop and implement an integrated "emerging" chemicals waste reduction strategy.

- A new regulatory paradigm to protect water quality is needed. Traditionally, for the 129 priority pollutants and others, criteria and standards development is done chemical by chemical. Analytical methods are developed chemical by chemical or by chemical class. Traditional model will no longer work for the much larger number of emerging contaminants. Therefore a new paradigm is needed. Success of the paradigm will depend considerably on keeping chemicals out of the waste stream and therefore surface and groundwater.

- The Water Board is a participant in the CalEPA Green Chemistry Initiative whereby state environmental agencies, business and environmental organizations will develop recommendations for evaluating risks, reducing exposure, and encouraging less toxic manufacturing processes, and identifying safer, less harmful alternatives. This will ensure a collaborative, more comprehensive approach to increase accountability and effectiveness of state environmental programs. Secretary Adam's memo on the Green Chemistry Initiative can be found at http://www.dtsc.ca.gov/PollutionPrevention/GreenChemistryInitiative/upload/CalEPA_Green_Chemistry_Initiative_Memo.pdf

13. *What other state offices do you coordinate with in attempting to identify these contaminants?*

- State agencies that the Water Boards coordinate with are the Office of Environmental Health Hazard Assessment (OEHHA), the Department of Health Services and the new Department of Public Health (DHS/DPH), the Department of Toxics Substance Control (DTSC), and the Department of Pesticide Regulation (DPR).

- We are also reaching out to and working with federal agencies such as U.S. EPA, USGS, and NOAA.

- We rely heavily for our investigative science work on two primary research groups: the Southern California Coastal Water Research Project (SCCWRP) and the San Francisco Estuary Institute (SFEI)/Aquatic Science Center. Both of these groups have made significant progress in monitoring for the effects of emerging contaminants. This will also tie back into the Water Board's work with the Green Chemistry Initiative which ultimately will provide a scientific basis and economic opportunity for environmentally safe products for the benefit of humans, wildlife, and the environment.

Personnel Issues:

14. *To what degree are the state and regional boards experiencing retirements from top management and manager-level employees? If such retirements are occurring, do you have succession plans?*

    - Over the last three years, one third of our executive team (7 out of 22) has retired. Currently 60% of our executive team is over 50, and 57% of our program managers and supervisors are over 50. We know we need to plan and we have been working on it.

    - In regard to a Succession Plan - The State Water Board recently completed an extensive workforce analysis. This analysis revealed that 36% of our staff is over 50, compared to 35% of the total state workforce. State government and the Water Board will experience a large number of retirements or separations during the next five to ten years. The workforce analysis has 36 recommendations that we will consider for implementation beginning this fall.

    - In addition to implementing these workforce analysis recommendations, we implemented The Water Board Leadership Academy four years ago. In partnership with several California universities we have programs in place for Executive Leadership, Supervisor and Program Management, Professional and Technical Development, and Staff Analyst Training and Development.

    - Additionally, during the last two years, the State Water Board has trained our managers and supervisors to improve the development of individual development plans for each of their employees and to receive employee feedback on staff development.

    - Investing in the development of our people is critically important to the Water Boards mission. We have made significant investments and will continue to make investments in staff development within existing resources.

15. *Are the state and regional boards experiencing any problems with employee retention or pay equity? Please describe how the board plans to reconcile these issues.*

    - The Water Boards are fortunate to have people, who I believe to be among the highest educated and hardest working professionals in state government. Effective recruitment, retention, and competitive pay are critical to our success.

    - We employ people in several professions, including engineers, scientists, geologists, attorneys, computer scientists, and accountants. Pay is the main ingredient for successful recruitment and retention. The pay is dictated by their respective collective bargaining agreements and I support the collective bargaining process. We will work with the Department of Personnel Administration, who is aware of pay disparity issues in the State, to help DPA

address and resolve these issues during upcoming bargaining negotiation sessions (see Attachment 5).

- Recruitment and retention at the Water Boards has improved over the last year. The Board's vacancy rate currently stands at 7.8%. Over the last year the average vacancy rate for the Water Boards was 9.2%, and has been as high as 10%. So currently we are one percent below our average vacancy rate for the last twelve months, a very positive trend. However, the average statewide vacancy rate is approximately 5 %.

- During the last year, we produced a brand new recruitment brochure and increased our outreach efforts. We also started to advertise on Web sites such as Monster, Craig list, and Nacelink. These efforts have improved recruitment and retention and we will continue to work hard to sustain this positive trend.

Attachments (5)

Statement of Goals

Question #1
What are your goals as a member of the State Water Resources Control Board? What do you hope to accomplish during your term? How will you measure your success?

Question #1: Part A, Goals

1. Adoption of a statewide water reclamation policy that enables water suppliers to provide Californians with significant additional drought-proof water supplies in a manner that protects environmental and human health.
2. Promotion of integrated water quality and water supply management, particularly at the regional level.
3. Engage the Water Boards statewide in using our water quality and water rights programs and policies to protect the San Francisco Bay-Sacramento/San Joaquin Delta.
4. Strengthen the Water Board's ability to enhance the role of water conservation in its water quality and water rights programs.
5. Incorporate climate change considerations into Water Board water quality and water rights decisions.
6. Work with the Water Boards and other state and local agencies and stakeholders to lay the foundation for a strategy to address the challenge of emerging contaminants.
7. Promote collaborative planning and decision-making on ocean, coastal and beach protection.

Question #1: Part B and C, What do you wish to accomplish during your term? How will you measure success?

My term is up in January 2009, and I am planning to make every moment count.

Throughout my career, I have been successful at working with a wide range of interest groups to solve problems. At the Water Board, I will use this talent to focus on building stronger, constructive relationships among state agencies and with regional/local leaders concerned with water supply and water quality. This, I believe, is an important precursor to making progress on my goals.

Following are the key measurable objectives for each goal that I will seek to accomplish, and January 2009 is my deadline:

1. Recycled Water

   By January 2008 I expect the State Board to adopt a statewide recycled water policy, and the guidance document to accompany the policy should be complete by June 2008. The focus of the policy is on consistent statewide standards for use of recycled water for urban landscape irrigation, recharge of groundwater basins and coastal barrier wells, and agriculture. In addition, the policy will propose a requirement for basin salinity plans allowing at least a decade to do so.

2. Integrated Management of Water Quality and Water Supply

During my term, I will encourage the Los Angeles and San Diego Regional Boards, to whom I am a liaison, to participate in Integrated Regional Water Management (IRWM). In these two geographic areas, there will be opportunities for funding projects and programs that advance the Regional Boards' water quality agenda and to build strategic partnerships with regional stakeholders. The State Water Board staff is already engaged with the IRWM leadership at the Department of Water Resources, and I will be working with the staff to keep all of the Regional Boards aware of this program as it evolves.

3. Bay Delta

Over the next two years, the Bay-Delta will be in the spotlight here in Sacramento. My focus, along with those of my fellow Board members, will be to act thoughtfully and decisively at the appropriate time on water quality standards and water rights to protect and restore the Delta ecosystem and to meet urban and agricultural need. To prepare for taking action, the Board will continue its practice of regular briefings and public workshops on Delta issues. There are additional thoughts under questions 7 and 8. I will certainly be staying abreast of the work being carried out by State Water Board staff and staff from the Central Valley Regional Board in collaboration with many other agencies and institutions.

4. Water Conservation

In order to have water conservation more in the forefront of water quality and water rights programs, it will be necessary to build up the expertise of the State and Regional Water board staffs on how water conservation can contribute significantly to these two priority program areas. I arranged for the California Urban Water Conservation Council to brief State Board staff early August, and I will work through State Board staff to include water conservation training for the regions. I will also work with State Board staff to develop a water conservation policy for the Board to consider during my term.

5. Climate Change

Climate change is a high priority issue for all the Water Board members. We are holding a workshop on climate change and water issues with Lester Snow from the Department of Water Resources on August 23, 2007. It is essential that climate considerations be integrated into water quality and water rights decision-making, and this workshop is a start down that road. I will focus with staff, other Board Members, and other agencies and stakeholders to identify where the Water Board can make a difference in reducing greenhouse gases and on what communities served by the Water Boards will need to do to prepare to adapt to climate change that is inevitable. I plan to use my tenure on the Board to help develop policies for both greenhouse reduction and adaptation.

6. Emerging Contaminants

   I see many parallels between the challenge of climate change and emerging contaminants, which I expand on under questions 11 and 12. As a State Board member, I will look for opportunities for us to join other CalEPA agencies and others in taking a lead on this issue. In particular, I will aim to have a workshop to identify actions that should be taken in the short term, while the science for a more comprehensive policy continues to unfold.

7. Ocean, Coastal, and Beach Protection

   Working with Water Board staff, the Secretary of CalEPA and her staff, and the Ocean Protection Council and staff, I will focus on improving the collaboration among relevant agencies to improve water quality in the ocean and in California coastal and beach areas, particularly in Areas of Special Biological Significance (ASBS) and the growing network of Marine Protected Areas. The measure of success will be the number of new inter-agency collaborative partnership projects.

State and Regional Boards' Relationship

Question #2:
In your view, what role should the state board play in relation to the regional boards? Do you believe the state board should have more oversight over the regional boards?

Question #2: Part A
In your view, what role should the state board play in relation to the regional boards?

In the world of water quality, the State Water Resources Control Board already has authority to establish and amend statewide policies consistent with the Porter-Cologne Water Quality Control Act, and Porter-Cologne authorizes the State Board to oversee the Regional Boards, who implement these policies, to ensure their actions follow the law and are consistent with the policy. When there is a dispute over a Regional Board's action on these policies, the State Board serves as an appellate body. The Board also has the authority to review regional actions on its own motion. The State Board can provide appropriate guidance to the Regional Boards, using a range of tools described below, but the State Board was not set up to control the Regional Boards. While in many ways this Water Boards structure is complex and difficult, I think it is a very realistic approach that if understood and worked with thoughtfully, is the best approach to benefit the people and the environment of California.

The question about what is the appropriate role and oversight of the State over regional resource management goes far beyond water quality. Over the last several years, spurred by resource bond measures and other factors, the legislature and state agencies have begun to create and implement policies that are designed to strengthen regional decision-making to achieve integrated resource management. The Water Boards system of the State Water Board and the nine regional water quality boards offers guidance as we move further down that path.

Following are insights I have gained:

1. Ideally the best decisions to implement water quality policies are done at the local or regional level where there is more information and experience. In order, however, for there to be consistency of purpose among the regions, the State Board must play a very strong role in ensuring coordinated planning among the regional boards and know when to step in and provide strategic leadership. The state staff and Board must use their position in Sacramento to keep the regional system connected to internal State Water Board and external legislative and administrative state priorities, but our obligation works the other way, too. You and others need to hear from us when regional variation is the strongest approach to protecting water quality.

2. As mentioned above, the State Board must pay close attention to the regional boards when they take different approaches to solving a problem, and learn to differentiate among actions that are stronger because of geological, geographical, or other local differences from other regions and those that should be consolidated into a statewide standard approach. To be able to do this more effectively, the State Board has recently hired Jonathan Bishop, former executive officer of the Los Angeles Regional Board, to be one of two Deputy Directors at the State Board, expressly to foster coordination and consistency between and among the State and the regions where it is most needed.

3. At the same time the State Water Board must be a strong and visible player with the Governor's office, other state agencies, and the Legislature to identify the water quality issues in all statewide policy and funding priorities that affect water quality, bringing our statewide and regional experience to bear. The current Board has the leadership skills, practical experience, and most importantly, the will to do this.

4. The tools the State Water Board uses with the regions are regular communications by state staff and Board members with regional board staff and members about issues, problems, and inconsistencies. We will wrap up our second 5-year strategic plan by the end of the year, and regional boards and stakeholders have been prominent participants. In this plan, we are likely to have performance-based objectives that will enable all of us to a better job in measuring the Water Boards' performance. The State Water Board provides essential grant and loan funding for high priority regional projects, and it is increasingly visible locally on enforcement and other legal issues. Training and educational opportunities are more available today than in the past to help everyone keep abreast of future issues and inevitable change.

Question # 2: Part B
Do you believe the state board should have more oversight over the regional boards?

Yes, with caveats. As discussed above, the State Board is in the best position to recognize legitimate reasons for certain inconsistencies and to guide regional staff and boards when a consistent approach to water quality control is best. Fortunately, too, the State Board has a full suite of planning and policy tools in the Porter-Cologne Act to guide it in increasing consistent policy implementation among the regional water boards,

not the least of which is setting identifiable performance measures to protect and improve water quality.

An important caveat is that consistency must not be viewed as the goal of the State Board. Water quality is the goal, and it is unrealistic to think that every regional water board can be required to take exactly the same approach to addressing each and every water quality problem. The state benefits when regions serve as laboratories to test different, often innovative, approaches to solving water quality problems. If necessary, the State Water Board can take appropriate action to ensure a particular approach, proved to be successful in one region, becomes the statewide standard, but the State Water Board should focus on efforts that achieve measurable improvements in water quality.

Another caveat is the need for all to recognize the value of flexibility, particularly as we move into a future that is unlike what we have experienced in the past, particularly in terms of known and unknowable risks. A closely coordinated, but independent regional/state water quality protection system affords the State Water Board the power necessary to set consistent statewide policy, while allowing the regional water boards to react quickly when local changes make current policy less effective.

The State Water Board has already launched several initiatives that should promote consistency and accountability among the regional water boards in achieving water quality policy goals.

1. The State Water Board has placed a renewed emphasis on its planning activities. Water quality control plans are generally developed by Regional Water Boards to address the watersheds that they regulate. However, the State Water Board has adopted, and will adopt, statewide water quality control plans to address issues that transcend regional boundaries. Such plans improve consistency because the plans and policies are enforceable regulations. Regional Boards then must implement the policies in their water quality permitting and enforcement decisions. Policies currently under active development by the State Water Board will address such issues as: water recycling, special protections for areas of special biological significance (ASBS), wetlands and riparian areas, chlorine residual objectives and an associated implementation policy, compliance schedules in National Pollutant Discharge Elimination System permits, mercury offsets, methyl mercury objectives, cooling water intake structures, whole effluent toxicity implementation provisions, and sediment quality objectives. Each of these policies will enhance consistency in the regions by providing enforceable statewide regulations.

2. The State Water Board and the Regional Water Boards are nearing completion of a process to update its Strategic Plan. The process began during the Fall 2006 Water Quality Coordinating Committee (WQCC) meeting. At the WQCC meeting, State Water Board and Regional Water Board members endorsed an update to the Strategic Plan. As an important part of this update, the Water Boards began an outreach effort to identify concerns in the public and the regulated communities about alleged inappropriate inconsistencies in how the Regional Water Boards protect water quality.

The Strategic Plan update is being conducting in a transparent manner, with input from numerous stakeholders. On March 12, a "stakeholder summit" was held in Sacramento. The summit included discussion of statewide issues concerning water quality and water rights, with a particular emphasis on consistency among the Regional Water Boards. A staff-level summit was held on April 16 and 17. Additional summits were held in each of the nine Regional Water Board's jurisdictions. Now we are incorporating this feedback from stakeholders and staff into an updated Strategic Plan that will be finalized by the end of the year.

3. The State Water Board's intention is to be an organization with clear, recognizable performance measures, as a way of making it easier for regional boards to see how their actions are achieving statewide policy goals and objectives. Importantly, this approach will give the Governor and the Legislature a way to know how well their investments in water quality are paying off, and the State Board will be better able to communicate what it is doing with the public. This performance-based approach builds off the state's Environmental Protection Indicators for California, the State Water Board is focusing its efforts on identifying measurable performance goals and outcomes, part of which requires changing how the units within the State Water Board focus on measurable outcomes to assess their overall performance. The shift to a performance-oriented organization is in its infancy, but key units within the State Water Board, including our Office of Enforcement, have already developed work plans to reflect our shift to performance measures. These measures should enhance both consistency and accountability statewide without jeopardizing the flexibility that is central to our mission.

Question #3
How often do you visit the two regional boards, to which you are the liaison? How do you assist these two regional boards in carrying out their duties?

My liaison assignments are the Los Angeles and San Diego Regional Boards, and I share the Lahontan Board with Art Baggett, attending the meetings that are in South Lahontan. I try to attend some portion of all regional board meetings and to be available for any special assignments that will help either the State Board in keeping up with regional issues and *vice versa*.

At each Regional Board meeting, I give a report from the State Board and make recommendations on what I see as State Board high priorities and ones where a region should take note, particularly where they may not fully appreciate the future impact of an activity. For example, only a few regional boards participate actively in the Integrated Regional Water Management (IRWM) planning and programs, yet much of the coordinated regional investment in water quality will come through that new mechanism.

I participate actively in briefings and activities that are of regional significance, but could also benefit from greater engagement from the State Board. Two recent examples are my participation in LA Regional Board and LA County Sanitation District's implementation actions for a chloride TMDL on the Santa Clara River and a briefing on chromium 6 actions being taken collaboratively among the LA Regional Board, several cities in the San Fernando Valley, the LA River Water Master, and USEPA.

As the only current Water Board member from Southern California, I focus a significant part of my time on making sure I have a good grasp of the regional impact of issues that are of statewide significance, including the Bay-Delta, climate change, emerging contaminants, and use of recycled water. As a person who, as Executive Director of the Mono Lake Committee, spent most of my time on water supply issues, I am now focusing on the interface between water supply and water quality. The two worlds of supply and quality have a lot in common, but there has been very little incentive for integration. That is changing, and I am glad to be in a position to work with friends and colleagues in both worlds for what I think will be a better future for the people and the environment of the state.

Question #4
Do you think there should be a legal reporting relationship between the executive officers of the regional boards and the state board's executive director? If so, how should it operate?

Ideally, there should not be a need for a legal reporting relationship between the Regional Water Board Executive Officers and the State Water Board Executive Director. If we are using the tools described above effectively and are able to measure performance, there is less urgency for a direct reporting relationship. But I can see a benefit from giving state board executive director authority over certain administrative tasks of the regional boards. An example is the exec director being able to recommend to regional boards disciplinary action for an exec officer that does not submit information to the state board for required reports to the legislature. This change would not create any policy oversight by state board exec director over the exec officers. It would, however, help to bond the system together administratively. It should not be used, however, to micro-manage the Regional Boards.

As discussed above, the State Water Board establishes general policy through a variety of means. Regional Water Boards are expected to comply with state and federal law as well as the policies and precedents established by the State Water Board. On the other hand, the Regional Water Boards are expected and encouraged to "think outside the box," to find new and better ways to use existing resources to protect and improve water quality and to work with dischargers and the public to find better ways to carry out their duties. It is critical that Regional Water Boards feel free to take innovative approaches just as it is critical that the State Water Board sit in judgment on those approaches to make sure that the law and policies have been followed and that the interests of the public and the regulated community are protected. The system works best when each does its job in the proper sequence.

Currently, the Regional Water Boards' Executive Officers work for the Regional Water Boards. They are appointed by them and serve at their pleasure. While the Executive Officers meet regularly with the State Water Board executive and program staff to share ideas and coordinate approaches, they ultimately answer only to the Regional Water Boards that appointed them. That is the law, and our new State Executive Director, Dorothy Rice, has the full support of the Board to use her skills and the State Board tools to improve on the overall performance of the current system.

Groundwater Protection

Question #5
Do you believe the state board is doing an adequate job of protecting and managing groundwater?

The short answer is no. As you know, the State Water Board system does not have statutory authority to **manage** groundwater. Its authority is to set water quality standards in the basin plans, which then should be used by local jurisdictions to develop groundwater management plans. But even within the authority we have, we are not doing as much as needs to be done. I sense the State Board and the Regional Boards are in a race to get out in front of a dramatically different future, where there will be water quality impacts from growing populations, increased economic activity, dramatic suburbanization of agricultural lands, and enhanced understanding of the effect of pollutants on human health and the environment. If we try to act alone, our odds of winning are poor. I support a strategy where the Water Boards work regionally with local stakeholders to develop better basin plans and then to join local jurisdictions in pooling regional, state, and federal financial resources to prioritize and implement projects coming out of the planning process.

Before addressing how to do a better job, however, it is important and impressive to know what authorities and programs the Water Boards has to work with now. Our tools are significant. In addition to setting standards and water quality objectives for groundwater, basin plans include prohibitions of certain waste discharges. The regulatory actions that implement the basin plans include issuance of waste discharge requirements (WDRs) for discharges to land (e.g., landfills, municipal and industrial waste treatment ponds) and cleanup of contaminant sites (e.g., discharges without requirements such as spills and leaks). State Water Board regulations require WDRs to include containment of waste and specific groundwater monitoring for higher threat waste discharges. Currently there are over 5000 active WDRs, supported by a staff of 140 people.

Discharges of waste that were never authorized are subject to cleanup and/or abatement. The Board's cleanup program has closed over 30,000 underground storage tank (UST) sites with 13,000 UST sites under investigation and cleanup. In recent years, the Board has been reimbursing over $200 million annually for investigation and cleanup at UST sites. The Board has also closed 750 non-petroleum contaminant sites with 1,800 sites under investigation and cleanup. The contaminant site cleanup effort is supported by about 450 staff at the Water Boards.

The State Water Board's Underground Storage Tank (UST) Leak Prevention Program is a national model in setting standards for tank design including secondary containment. Several of the UST Leak Prevention Program's recent successes were adopted by Congress in this year's Energy bill. The State Water Board sponsored legislation requiring the most environmentally-protective design in the nation for new USTs.

The State Water Board's Groundwater Ambient Monitoring and Assessment (GAMA) program also receives national recognition for its innovative and comprehensive approaches to statewide assessment. This program grew out of AB 599 (Liu, 2001), which directed the State Board to develop a statewide monitoring program and $50

million from Proposition 50 bond funds to implement the program. Wells are randomly selected and are tested by the US Geological Survey and Lawrence Livermore Laboratory for age of the groundwater and very low-level detection of constituents to provide information on the current quality, trends in quality, emerging contaminants and hydrogeology. No other program in the nation uses age-dating and low level detection (parts per trillion) monitoring for assessing groundwater quality. Approximately one half of the wells that account for over 90% of groundwater use have been sampled and reports are available on the Internet as they are completed.

Releases of commercial and industrial contaminants from thousands of former businesses (e.g., solvents from dry cleaners, perchlorate from defense and other industrial facilities, MTBE from petroleum USTs) have resulted in groundwater contamination, particularly in urban areas, and State Water Board has the authority to investigate and order responsible parties to clean up the groundwater. The State Water Board is currently overseeing perchlorate investigations and cleanup at priority military facilities.

Percolation of contaminants (salts, fertilizers, pesticides from irrigated agriculture; salts and nitrogen from dairies, feedlots and other confined animal facilities; salts, nitrogen and organic compounds from publicly owned treatment works and food processing operations; salts, nitrates, pharmaceuticals, personal care products from septic tank systems) into groundwater basins has resulted in widespread degradation of groundwater, causing thousands of public supply wells to be taken out of production. Additionally, of the 900 private domestic wells tested by the State Board, over 25 percent tested positive for total coliform bacteria. In Tulare County, over 40 percent of the 181 domestic wells tested were above the drinking water standard for nitrate. The Water Boards can and do use their powers for investigation and clean up on these problems, but as you can imagine, the work far outstrips the Boards capacity to deliver results.

Question #6
Should the state board protect groundwater beyond the current monitoring effort? How would you propose to fund such efforts?

As described above, the State and Regional boards can and are doing more than monitoring, but you are correct to suggest that monitoring is just one component of what is needed to become successful at identifying where to invest available dollars to produce the maximum water quality benefits to the State.

You noted in your introductory paragraphs to this section that each regional board has basin plans which establish water quality objectives for groundwater. These plans are examined every three years, as required by the Clean Water Act, but there are structural reasons why many plans are not strong guides for groundwater protection. The original planning documents developed in the late 1970s, upon which many current plans and updates are based, are either not accurate or the various parties using the documents cannot agree on their accuracy. Rarely, however, do Water Boards and stakeholders request budgets for a "soup to nuts" reevaluation of basin plans, so decisions about groundwater are often made in an atmosphere of real or perceived uncertainty. Monitoring, an increasingly important activity for triggering when and how to deal with risks, must be based on a sound understanding of how groundwater basins function.

Here is an example of what the Water Boards and stakeholders can do to improve groundwater management. Over the last decade Region 8, Santa Ana, engaged their local stakeholders, including the Santa Ana Watershed Project Authority (SAWPA), in a facilitated, seven year revision of their basin plans focusing on salinity management. The cost was largely in-kind time from stakeholders and several million dollars, administered by SAWPA, to pay for facilitation, studies, and other process needs. The result was a re-drawing of their four basins reflecting how the basins actually work, new basin water quality objectives that are achievable over time, some agreed-to rules on how to get there, the identification of sites for new facilities to desalinate groundwater and monitor water quality, and a multi-year financing plan to build those facilities.

My goal is to work with Regional Boards and IRWM programs where groundwater basins figure prominently in water management to pursue full updates to their basin plans for salinity and/or other priority pollutants. Keeping in mind the Santa Ana experience, this planning effort should take more time than appropriated dollars, but money must be available for keeping the process on schedule. It helps, too, if there is an agency, like SAWPA, that can cost effectively administer the contracts for the planning effort over a long period of time.

As revised plans are put in place statewide, the Water Boards must join with regional stakeholders to support financing strategies to cover the high cost of new clean-up facilities, improved monitoring, investigations to find responsible parties to conduct site investigation and cleanup, and programs to help stakeholders make changes in polluting operations. At the same time, the Water Boards must be willing to use the regulatory tools described in #5 (WDRs, clean-up and abatement, and enforcement) to emphasize the seriousness of the revised plans. Finally, the Water Boards must develop the capability of quantifying the related economic impacts of poor water quality to climate, development/growth, water supply, and public health issues, and to work with the Governor and the Legislature to spread the cost of high quality water among the beneficiaries of that water.

Sacramento-San Joaquin Delta

Question #7
In light of recent developments, how is the State Board working with other state agencies to manage the Delta? What role will your Board play in the short term? What is your view of how the Delta should be managed for the long term?

Question #7: Part A
In light of recent developments, how is the state board working with other state agencies to manage the Delta?

In the 1970s, the State Water Board established requirements that led to long-term monitoring and the recent discovery of the Pelagic Organism Decline (POD). The State Water Board participates in interagency decision-making in groups such as: (1) the Interagency Ecological Program, which directs and evaluates scientific studies on Delta ecological resources and (2) various California Bay-Delta Authority activities, such as the Water Operations Management Team and the CalFED Operations Group to assist in evaluating real-time water project operational decisions. In response to the POD, the Water Boards have been working closely with the Department of Water Resources

(DWR), the Department of Fish and Game (DFG), the University of California (UC) at Davis, and the California Department of Pesticide Regulation to identify conditions, specifically water quality and flow conditions, in the Delta that may be adversely affecting Delta smelt and other pelagic organisms.

The Water Boards are working with other agencies to develop communication and action plans that outline immediate actions that should be taken when toxicity is detected. Additionally, at the suggestion of the Water Boards, UC Davis researchers are collecting additional samples upstream of the toxic sites in an attempt to identify the sources and causes of toxicity. They have also begun toxicity screening with hatchery-spawned Delta smelt.

The Water Boards also reviewed data from the Sacramento River Watershed Program, the Irrigated Lands Program, Sacramento Area Coordinated Monitoring Program, City of Stockton Stormwater Program, and Department of Pesticide Regulation Environmental Monitoring Program to determine whether other monitoring programs detected toxicity or pesticides during the winter-spring 2007 time period. The data rarely showed detectable organophosphate (OP) pesticides in the Sacramento River, and when OP pesticides were detected, they were at levels that are not expected to cause toxicity to test organisms.

The Water Boards have also been in contact with the Department of Pesticide Regulation to determine improved opportunities for pesticide sampling in Delta water bodies and improved management controls through County Agricultural Commissioners.

In regard to flow issues, many Delta water diverters are not required to have a water right from the State Water Board and are exempt from requirements to report water diversion and use to the State Water Board. When the Department of Water Resources shut down Delta pumping, the State Board provided the Department of Fish and Game (DFG) with names and addresses of known water diverters in the Delta so that the DFG could send out a letter on June 1, 2007, requesting diverters "to voluntarily cease or substantially reduce diversion from south delta channels..." The DFG identified other Delta water users not previously known to the Water Boards. On July 13, 2007, the Water Board sent letters to these and other diverters in the Delta and on Delta tributaries requesting information on their diversions and to determine if they voluntarily ceased diversions in response to the DFG letter. The State Water Board letter also asked diverters if: (1) they intended to implement measures this year to reduce or curtail diversion in order to conserve water, or to protect Delta smelt; (2) their diversion is screened for the protection of aquatic resources; and (3) their diversion is equipped with a flow measuring device, and (4) if the recipient had comments or recommendations regarding Delta smelt or and any information regarding unauthorized water diversions. This information will be shared with DFG.

The State Water Board is working with DFG to map screened and unscreened Delta diversions. Similarly, the State Water Board and DWR are working together to map historic points of diversion and water delivery systems as identified in the State Water Board's historic documents. Using this information, and relying in part on new functionality that will be available in September 2007 as a result of the Water Board's integrated water right/water quality management system, the State Water Board will begin to identify related Delta diversions and Delta discharges. Once mapped, this

information can be used to identify whether integrated regional opportunities exist to improve the timing and method of Delta diversions and discharges to improve Delta conditions for fish and other beneficial uses.

In its regulatory capacity, the State Water Board continues to oversee the water right permits held by DWR and the federal government, and to review coordinated water project operations on a real time basis to identify and implement opportunities to protect Delta smelt and other organisms, while also protecting other water uses.

The State Water Board will continue its heightened coordination with state and other agencies so that it can promptly respond to any new information as it is developed and develop other short and long-term water quality control actions.

Question # 7: Part B
What role will your board play in the short term?

In addition to some of the actions described above, attached is the July 19, 2007 letter from State Water Board Chair Tam Doduc to Senator Darrell Steinberg giving an overview of actions the State Water Board and the Central Valley Regional Board (Region 5) are taking on the POD decline in the Bay-Delta. Over and above the Water Boards efforts to control waste and toxic discharges and development and implementation of flow standards, the Board has held two workshops (March and June 2007) and reassigned State and Regional staff to focus on 1) development of pesticide control programs to protect aquatic life from pesticide runoff, including on-going monitoring to identify problem areas; 2) establishment of stringent limits on point source discharges; and 3) Bay-Delta water quality control planning to review flow and water quality standards in the Bay-Delta

I, and my fellow Board Members, have made taking action on Bay-Delta issues their highest priority. Our preference is to focus first on a cooperative approaches, because we think these can be fast and cost-effective. However, if cooperative efforts are not adequate, we are committed to exercising the regulatory powers contained in the Water Code, consistent with the California Constitution. Water Board staff are evaluating our regulatory options now. If grounds exist and there is adequate evidence, the State Water Board can consider administrative water quality and water right enforcement actions, including cease and desist orders, clean up and abatement orders, and civil liability penalties, or The State Water Board can seek injunctive relief in court to protect Delta fisheries. If there is not an adequate basis to take an enforcement action directly, but new information suggests that water quality and water right permits are not sufficiently conditioned, or that new water quality permits are needed to protect species, the Water Boards can consider permit terms and conditions to provide higher levels of protection.

Question # 7: Part C
What is your view of how the Delta should be managed for the long term?

In the long term, I think the Delta should be managed to provide much more protection to the Delta as an ecosystem for fish and wildlife. I also think this approach is compatible with meeting agricultural and urban needs both inside the legal Delta and outside. The State Water Board has the legal authority and obligation to balance these uses, taking

into consideration legal protections and societal values, and I am quite sure we can be creative as we seek solutions that benefit all of California.

Other factors that will also affect the Bay-Delta and must be considered in this rebalancing are climate change, the water supply needs of an increasing population, and technological capability to stretch current water supplies through greater efficiency, including water recycling, and other best management practices. It is clear to me that beneficial uses will not be protected in the same way that they are protected today, and the challenge of change will be politically and financially daunting. I look forward, however, to being part of a Water Board that helps shape the considerations that must occur as the Governor, the Legislature, and the public wrestle with these challenges.

Question #8
The Porter-Cologne Act provides the Board with the authority to protect the beneficial uses of water in the Delta. How is the Board using this authority beyond setting salinity standards?

The Porter Cologne Water Quality Act directs both the State's water quality planning activities and core regulatory activities, such as permitting and enforcement. Following are some important actions that have been taken, and are being taken, by the State Water Board.

Planning:

The State Water Board sets flow and flow-related objectives for the Delta, and reviews and approves other water quality objectives adopted by the Regional Boards. Porter-Cologne envisions a continuing planning and implementation process, with regular review and revision of water quality plans after routine assessment of how successful permitting activities have been in protecting beneficial uses of water. California is unique in the United States in integrating water quality and water supply by investing both water quality and water rights regulatory authority in one agency. The Water Boards issue both water right and water quality permits to implement the objectives in water quality control plans, including the Bay-Delta plan.

The State Water Board adopted the most recent Bay-Delta Water Quality Control Plan in December 2006. The Plan became effective upon approval by the Office of Administrative Law in June 2007. This plan includes objectives for Sacramento and San Joaquin River flows, Delta outflow, Delta inflow and outflow relationships, salinity at numerous Delta locations, dissolved oxygen in the San Joaquin River, and operating criteria that affect physical structures in the Delta and Suisun Marsh. This plan identifies four emerging issues in the Delta: the POD; climate change; Delta and Central Valley salinity; and San Joaquin River flows. The State Water Board is conducting a series of workshops on these emerging issues, including a January 2007 workshop on salinity and a series of follow up meetings, the POD workshops held in March and June 2007, and a workshop on climate change in August 2007. Information obtained in these workshops will be used to identify changes needed in flow and water quality objectives to protect beneficial uses, and the program of implementation needed to achieve these objectives. Information from these workshops will also be used to identify interim measures needed to protect beneficial uses and the public trust, including enforcement, and to identify whether changes in the plan objectives are required.

TMDLs:

The Basin Plan for the Central Valley includes objectives for other water quality parameters such as toxic compounds within the legal Delta as well as salinity and other objectives for Delta tributaries that are outside of the legal Delta. The Water Boards adopt Total Maximum Daily Load (TMDLs), a plan for dealing with pollution allocations for impaired water bodies. For the Delta and its tributaries, the Water Boards have adopted TMDLs for pollutants such as pesticides, salinity, boron, selenium, as well as for dissolved oxygen.

The Water Boards have been concerned about organophosphate (OP) pesticides or pyrethroid pesticides in Delta water since the late 1980s. In the early 1990s, toxic concentrations of OP pesticides were present in the rivers and Delta channels for several days at a time. In response, the Water Boards developed and adopted TMDLs to reduce concentrations of the OP pesticides diazinon and chlorpyrifos in the Delta and tributaries. The OP pesticide TMDLs also include provisions to ensure that replacement pesticides, such as pyrethroids, do not become a problem. Urban uses of the OP pesticides have been phased out, the overall agricultural use of diazinon and chlorpyrifos has been significantly reduced, and new label restrictions have been adopted to reduce the amount of pesticides that enter waterways from agricultural operations. As a result of the TMDLs and associated activities, the concentration of diazinon and chlorpyrifos in the Delta and upstream tributaries has decreased dramatically.

Because pesticide pollution occurs as the result of discharges, implementation of pesticide TMDLs involved actions related to discharges. However, addressing issues relating to chemical properties requires other strategies. Near Stockton, the San Joaquin River is impaired for oxygen; this impairment affects salmon migration. At times, no dissolved oxygen has been detected. The Water Boards' TMDL for dissolved oxygen on the San Joaquin River at Stockton is being implemented through all water quality regulatory actions available under both Porter-Cologne and the federal Clean Water Act, including point discharge permits, stormwater permits, and water quality certifications for dredging activities. Artificial aeration of the river has been required as an offset of oxygen demand that cannot be mitigated from some projects. Those re-aeration facilities are all in operation. If these actions should prove unsuccessful, the State Water Board could consider revising water right permits and certain water quality certifications to provide sufficient additional flows to improve dissolved oxygen.

Limits on Point Source Discharges:

Discharge permits for the wastewater treatment plants in the heart of the Delta adopted over the last decade have included much more stringent discharge conditions recognizing the critical conditions of the Delta, including limited dilution, receiving water toxicity, low dissolved oxygen, and the presence of endangered species. These treatment plants have either completed major upgrades to include tertiary filtration and nitrification to remove ammonia, or are nearing completion of such upgrades. Stockton, for instance, is in startup of a major expansion that includes upgrades to address toxicity and dissolved oxygen issues.

Agricultural Wastewater Discharges:

The Water Boards have been working with coalitions through the Irrigated Lands Program to identify constituents of concern through monitoring, identification of sources of pollutants, and development and implementation of corrective action when needed.

Water Right Actions:

In 2000, the State Water Board revised the water right permits of a number of water diverters from the Delta and its tributaries to implement flow objectives that it adopted in its 1995 Bay-Delta Water Quality Control Plan. The State Water Board also implemented salinity objectives through requirements imposed on the State and Federal Water Projects. The State Water Board monitors water diversions to ensure compliance with water right permit conditions. For instance, the State Water Board is currently reviewing circumstances associated with an exceedence of southern Delta salinity objectives to determine if water diversions worsened salinity.

In 2000, the State Water Board also amended numerous water right permits to provide for a 12-year study of the relative effects of tributary flow and export pumping on San Joaquin River salmon smolt survival. The State Water Board continues to review data collected as part of this study. Although not directly related to either flow or exports, the Water Boards were notified in May 2007 that juvenile salmon released in the San Joaquin River in May 2007 for the study appeared to have died near the City of Stockton. There are several possible explanations for the observed mortality, including predation and toxic discharges. In response to this report, the Water Boards inspected the Stockton Wastewater Control Facility on May 22, 2007, to evaluate if effluent discharges might have caused or contributed to the reported incident. The inspection did not reveal any strong evidence to link the salmon mortality with Stockton's discharge. In addition, UC Davis researchers collected samples from the area and screened them for toxicity and found no toxicity to fish or invertebrate test organisms. The Water Boards have not been able to determine why the tagged salmon apparently died at this location, but the event does not appear to have been caused by toxicity in the Stockton discharge.

Lastly, the State Water Board continues to process water right actions to improve Delta conditions. On June 8, 2007, Merced Irrigation District filed a Water Right Petition for Temporary Urgency Change with the State Water Board to temporarily amend its water right to include the Delta. This was done to facilitate a transfer of 850 cubic feet per second of water for a period of several days to increase San Joaquin River flows. The purpose of the transfer was to maintain net positive outflow flow in Old and Middle Rivers in the Delta to protect Delta smelt so that the US Bureau of Reclamation could divert low volumes of water at its facilities near Tracy and meet health and safety needs. The State Water Board reviewed and approved the request that same day. On June 28, 2007, the State Water Board received an additional petition for temporary change from Merced Irrigation District requesting the transfer of up to 25,000 acre-feet of water to provide instream flows for fishery protection within the lower San Joaquin River to the Delta between October and December of 2007. The State Water Board is in the process of providing public notice of this petition.

Strategic Plan

Question #9
Please describe some of the priorities that you believe should be included in the strategic plan.

I attended the statewide stakeholder meeting in March 2007 on the strategic plan and also the regional meetings in Los Angeles and San Diego. Some of the clear themes I heard at these meetings mirror my own priorities.

Integrated water quality and water supply management: Many participants prefaced their remarks with the phrase, "water is water." My translation of this phrase is that we should be managing water as a valuable resource for people, the environment, and the economy and not in silos. Water quality management should reflect our knowledge that surface water interacts with groundwater and coastal/ocean waters; all water is recycled water; and the quality of water, whether it is recycled, storm water, dry weather runoff, pumped groundwater, or water in streams and aqueducts, cannot be determined by the category in which it is classified at some point in time. In a future filled with uncertainty about climate, weather patterns, and earthquakes and in a State and world where we know growing human, environmental, and economic needs will require high quality water and safe drinking water, we must do a much better job in targeting our dollars toward integrated water quality and water supply projects that provide for multiple beneficial uses.

Reclaimed Water: Another high priority I heard and share is the need for a statewide policy on reclaimed water that will make it easier for communities to adopt programs and projects to make use of this valuable water supply. There will a draft recycled water plan out for public comment soon, and with any luck when the strategic plan is complete and on the State board website in December 2007, we will not only have recycled water listed as a statewide priority, but there will be a policy that gives Water Boards, and the public, confidence in recycled water projects to meet future water demands safely.

Climate, population, and emerging contaminants: Stakeholders urged the State and Regional Water Boards to focus on the highest priorities, which I heard as a plea to use the strategic planning process as a way to rethink current water quality priorities through the lens of near and long-term challenges: climate change, significant development and economic pressures brought on by increasing numbers of people in the Central Valley and Southern California, and emerging contaminants. This is not a job just for the Water Boards, but one in which the Water Boards can take a lead in analyzing water quality challenges, shaping recommendations, and implementing projects and programs in concert with other parts of government and society. In my opinion, we have a better chance of building a better environment for future generations in this atmosphere of risk and experimentation than under the illusion that business as usual is good enough. My own personal priority within this category is to promote actions that will protect ocean and coastal environmental habitats and will help coastal communities prepare and adapt for inevitable change.

Finally, the San Francisco Bay-Sacramento/San Joaquin Delta must be a high priority in the strategic plan. Much of the current focus is on what can be done in and around the Delta, which is critically important, but there will be strategic priorities in the new plan

focused on low impact development, water conservation, recycled water, stormwater capture and reuse, conjunctive use of groundwater basins, brackish and ocean water desalination, and more—all local projects that in fact are critical to successfully restoring the Delta for wildlife, water supply, agriculture, and other beneficial uses.

Following is an early staff summary of additional input received through the recent outreach efforts in our strategic plan update process. Stakeholders have identified Basin Plan Updates, TMDL development, Water Rights, Water Recycling/Reuse, Storm Water and further development of an Integrated Watershed Approach as priorities.

Summary of Stakeholder Strategic Plan Input

- Basin Plan Updates should use collaborative and leveraged partnerships (such as the California Water Plan and Santa Ana Watershed Project Authority models) to coordinate regional information. Basin plans should be revised with current information to identify appropriate beneficial uses and both numeric and narrative water quality objectives; the resulting basin plan standards should be applied in permits. Other suggestions also included a streamlined amendment process, supporting legislation for broad-based funding, encouragement of innovation and risk-taking, better use of science, and better public outreach.

- TMDL efforts should focus on all sources of contamination and promote the adoption of a watershed approach for implementation of solutions. Analyses should consider cost/benefit assessments (to determine the net benefit) and the role of offsets. Clear performance measures and adaptive management strategies would guide compliance to improve source control and voluntary compliance.

  The TMDL program should develop Best Management Practices (BMPs), improve strategies for monitoring and reducing non-point source loads, and expedite restoration permits. Other suggestions included a continued focus on geographic priorities; development of monitoring programs that address TMDL effectiveness, cost effectiveness of monitoring, and assessment of beneficial uses (beyond monitoring of pollutants).

- Water Rights efforts need to focus on improving workflows for new applications through better use of watershed-scale programmatic Environmental Impact Reports and water availability analyses that support site-specific permit analysis (e.g. Russian River, stock ponds). Approaches to reducing the current backlog are a high priority and suggestions included the use of third-party outsourcing, with appeals handled by administrative law judges or special hearing officers.

- Enhanced training for staff is very important and many suggestions centered around an expedited permitting process that integrates the requirements associated with the California Environmental Quality Act (CEQA), Endangered Species Act (ESA), and public trust doctrine. The funding issue for this program is recognized as critical and some participants suggested that it could be resolved through the use of non-user fees.

- Water Recycling/Reuse approaches are critical needs for the Water Boards and should address salinity issues including research on salinity disposal; permitting of

brine lines; a mass balance for salinity; and support for statewide source control (e.g. water softeners, etc.). Disincentives were recommended for irrigating with potable water, with incentives created for purple pipes (including legislation requiring purple pipes in new development). Attitudes regarding water reuse are recognized to be critical in developing these approaches.

- Stormwater approaches should shift from addressing runoff to focusing on infiltration and recharge. The Water Boards are now working to develop more quantifiable measures and are looking at integrated resource benefits. A cost balance approach could include an economic analysis/balance, full accounting of costs and benefits, and a feasibility assessment.

  In taking a comprehensive approach to stormwater, a consistent statewide policy should be developed. Support of research and the development of design-appropriate technology and bio-engineering strategies are critical as well.

- An Integrated Watershed Approach was consistently emphasized throughout the Water Boards' Strategic Planning input sessions. This approach would address return flows, closed systems (multi-user systems approach), groundwater recharge, and in-stream flows. It would recognize hydrologic modification (e.g. how creek channelization modifies beneficial uses) and integrate large areas of federally-owned lands.

  An integrated, watershed approach would provide a consolidated and coordinated framework to increase efficient use of resources across the range of Water Board programs. This approach would need to be defined by drawing upon other models, examples, and structures (including the Watershed Management Initiative) and by identifying opportunities to integrate other state, federal and local agencies and programs.

Question #10
When the state board prepares the annual budgets for itself and the regional boards, what is the basis for that budgeting? Is it the 2001 strategic plan? If not, what is the basis?

The State Water Board budget supports water quality and water rights programs at the State Board and nine regional boards. In fiscal year 2007-08, the State Water Board is authorized by the Budget Act to spend $835 million: $261 million for state operations and $574 million for clean water projects at the local level (local assistance) and underground storage tank claims.

The Board takes into account the 2001 strategic plan, but there is very little flexibility in the budgeting process. We work with a complex funding structure that includes over 90 individual fund sources, including federal grants (39) and reimbursement agreements (26). These funds are used for a broad range of program activities throughout the state.

The budget is developed using a baseline methodology, not a zero-based methodology. This means that funding is allocated to specific program areas and is only changed when the Governor and Legislature approves changes, such as through the budget change proposal process. This method of budgeting does not allow for flexibility in how

funds are used, since funding is associated with specific programs and therefore controlled by the Budget Act. These restrictions do not allow the State Water Board to redirect resources to other programs without legislative approval. The use of most of these funds is restricted to specific activities by statute, grant or contract agreement. For example, bond funds are highly restrictive in the types of activities that can be funded; administrative and oversight costs allowed are minimal. Special funds also tend to be restrictive in their use. The State Water Board's budget is four percent General Fund and 96 percent special funds.

The Department of Finance provides direction on the expenditure authorization controls that are laid forth in the Budget Act. Ultimately, the Secretary of the California Environmental Protection Agency and the State Water Board Executive Director are held responsible for managing our finances.

Following are a few examples, however, of where the Water Board has been able to match its spending authority to strategic goals:

- We added forty new staff to address brownfield cleanup sites throughout the state, which is a key strategic project in support of 2001 strategic plan goal #3: "Groundwater is safe for drinking and other beneficial uses."

- We added six additional staff and contract funds to help improve the efficiency of our water rights program to reduce our backlog and update our water rights information management system. This is a key strategic project to improve water rights processing supporting 2001 strategic plan goal #4: "Water resources are fairly and equitably used and allocated consistent with public trust."

- We added $4.5 million and a one time augmentation of $4 million for surface water ambient monitoring to enhance all of our key strategic projects in support of 2001 strategic goal #6: "Water quality is comprehensively measured to evaluate protection and restoration efforts."

Emerging Contaminants

Question #11
How does the Board address potential water quality problems created by emerging contaminants?

As with climate change, emerging contaminants are a beacon of future pollution problems worldwide that go far beyond our current methods of treatment and control. Like climate issues, the impact of emerging contaminants come from diverse sources—pharmaceuticals, synthetic or naturally occurring hormones from people and livestock, plasticizers, personal care products, pesticides, and fire retardants. Another parallel with climate in these early days of sounding the alarm on emerging contaminants, scientists are certain there is a serious problem, but they are uncertain about many important details. Finally, source control is at the heart of the solution, and because these contaminants are used by so many, so broadly, it will take statewide and national leadership to make serious headway in addressing this issue.

The State and Regional boards are nevertheless stepping up to take a leadership role on this issue, but while we have the authority of water quality laws, which require water quality standards to protect "beneficial uses," we do not yet have many of the key underpinnings we need to take strong action or to advise you on additional laws that need to be passed. Below are some of the missing pieces:

- A new regulatory paradigm, as envisioned by the CalEPA Green Chemistry Initiative, is needed to protect water quality by keeping chemicals out of the waste stream. Water quality standards for surface waters currently focus on specific chemicals, the USEPA-designated 129 "priority pollutants," and standards development and analytical methods are done chemical by chemical or by chemical class. This traditional model will not work for the much larger number of emerging contaminants. Therefore the only way to reduce these chemicals in surface water and groundwater to less damaging levels is to eliminate these chemicals where we have control over their use.

- More and better science is needed to guide the step discussed above. Not a lot is known about the effects of many pharmaceuticals in the water environment. The Water Board is participating in research and partnering with other agencies and groups to try and identify what the potential threats are and what actions should be taken to address them. At the State Water Board's May 1, 2007, meeting Ken Schiff, Deputy Director, Southern California Coastal Water Research Project (SCCWRP), gave a presentation on *Emerging Contaminants in Southern California* (http://www.waterboards.ca.gov/agendas/2007/may/0501_4_kenschiff.pdf). This presentation highlighted the work done by SCCWRP in identifying endocrine disruption in fish around the Southern California sewage outfalls. The State Water Board has provided funds to SCCWRP to determine if chemicals in wastewater could be responsible for the observed endocrine disruption and feminization effects. The Central Valley Regional Water Board, U.S. EPA, and U.C. Davis, in a collaborative effort, are investigating bioassay techniques to determine the presence of endocrine disruptors in fresh water. Deb Smith, Acting Executive Officer of the Los Angeles Regional Board serves on several national expert committees on the subject, and Gary Wolff, State Board member has participated in a joint speciality conference on emerging contaminants of the American Water Resources Association and the American Bar Association.

- Finally, my goal on this issue is to bring the State Water Boards to a place where they can make interim recommendations for early, prudent, precautionary actions, such as identifying chemicals that cannot be removed with advanced treatment; identifying areas of highest risk, such as effluent dominated waters; and identifying people who are at greatest risk, such as pregnant women and people with immune disorders.

Question # 12
What other state offices do you coordinate with in attempting to identify these contaminants?

- The State Water Board and its Cal/EPA sister agencies are working together on promising partnership, the Green Chemistry Initiative, whereby state environmental agencies, business, and environmental organizations will develop recommendations

for evaluating risks, reducing exposure, and encouraging less toxic manufacturing processes, and identifying safer, less harmful alternatives. http://www.dtsc.ca.gov/PollutionPrevention/GreenChemistryInitiative/upload/CalEPA_Green_Chemistry_Initiative_Memo.pdf

- On May 22, the Department of Toxic Substance Control held a *Pharmaceuticals and Personal Care Products Symposium.* The Web site address for information presented at the symposium is http://www.dtsc.ca.gov/AssessingRisk/PPCP/index.cfm and the presentations are available under the agenda link.

- Other state agencies that the Water Boards coordinate with are the Office of Environmental Health Hazard Assessment (OEHHA), the Department of Health Services and the new Department of Public Health (DHS/DPH), and the Department of Pesticide Regulation (DPR).

- We are reaching out to and working with federal agencies such as U.S. Environmental Protection Agency, US Geological Survey, and National Oceanic and Atmospheric Administration.

- We rely heavily for our investigative science work on two primary research groups: the Southern California Coastal Water Research Project (SCCWRP) and the San Francisco Estuary Institute (SFEI)/Aquatic Science Center. Both of these groups have made significant progress in monitoring for the effects of emerging contaminants. This will also tie back into the Water Board's work with the Green Chemistry Initiative which ultimately will provide a scientific basis and economic opportunity for environmentally safe products for the benefit of humans, wildlife, and the environment.

Personnel Issues

Question #13
To what degree are the state and regional boards experiencing retirements from top management and manager-level employees? If such retirements are occurring, do you have succession plans?

Over the last three years, one third of the Water Boards' executive team (7 out of 22) has retired. Currently 60% of our executive team is over 50, and 57% of our program managers and supervisors are over 50. According to a recent workforce analysis, 36% of our staff is over 50, compared to 35% of the total state workforce. Thirty-six recommendations of the workforce analysis are central to our succession planning, which we will launch this fall.

In addition we established The Water Board Leadership Academy four years ago. In partnership with several California universities we have programs in place for executive leadership, supervisor and program management, professional and technical development, and staff analyst training and development. During the last two years, the State Water Board has trained its managers and supervisors to improve the individual development plans for each of their employees and to receive employee feedback on staff development.

As you suggest, there is a serious potential problem particularly for our science staff. I will encourage our executive director and labor representatives to work together to address this problem because we cannot afford to carry out our programs in the absence of good science staff.

Question #14
Are the state and regional boards experiencing any problems with employee retention or pay equity? Please describe how the board plans to reconcile these issues.

The Water Boards are fortunate to have people, who I believe to be among the highest educated and hardest working professionals in state government. Effective recruitment, retention, and competitive pay are critical to our success.

We employ people in several professions, including engineers, scientists, geologists, attorneys, computer scientists, and accountants. Pay is the main ingredient for successful recruitment and retention and is dictated by their respective collective bargaining agreements. We are working with the Department of Personnel Administration, who is aware of pay disparity issues in the State, to help DPA address and resolve these issues during upcoming bargaining negotiation sessions.

Recruitment and retention at the Water Boards has improved over the last year. The Board's vacancy rate currently stands at 7.8%. Over the last year the average vacancy rate for the Water Boards was 9.2%, and has been as high as 10%. So currently we are one percent below our average vacancy rate for the last twelve months, a very positive trend. However, the average statewide vacancy rate is approximately 5 %.

During the last year, we produced a brand new recruitment brochure and increased our outreach efforts. We also started to advertise on Web sites such as Monster, Craigslist, and Nacelink. These efforts have improved recruitment and retention, and we will continue to work hard to sustain this positive trend.

RESPONSES TO QUESTIONS FROM THE SENATE RULES COMMITTEE ENERGY COMMISSIONER AND VICE CHAIR JAMES D. BOYD

Statement of Goals:

1. *What are your goals as a member of the Energy Commission? What do you hope to accomplish during your term? How will you measure your success?*

My goal is to fulfill the statutory responsibilities of an Energy Commissioner in a fair and equitable manner, balancing the state's energy needs with the need to protect the environment, public health, and the state's economic well being.

I would like to restore confidence in California electricity program (following deregulation and the electricity crisis of 2001) by providing reliable, efficient and affordable electricity to the state's consumers. Achieving this goal would mean ensuring adequate and diversified electricity generation and transmission infrastructure, and placing high priority on energy efficiency, demand management, and renewable energy programs. These programs are designed to minimize the need for costly infrastructure additions and to maximize our energy security.

To that end, we need to ensure adequate supplies of clean burning natural gas to meet electricity generation, industrial boiler and home heating needs at fair prices. We need to continue to assess the issues associated with adding supply from worldwide liquefied natural gas sources to supplement our diminishing North American natural gas supplies. We need to pursue the added production of biogas, biopower, and biofuels from instate sources.

During my first five-year term as Energy Commissioner, I have supported a number of energy policy initiatives on alternative transportation fuels, bioenergy, and climate change issues. My goal is to continue the progress being made and to carry through with the still unfinished work that's needed in these areas in my second term as Commissioner.

My near-term goal is to complete the development of the State of California's Alternative Fuel Plan, as required by Assembly Bill 1007 (Pavley, Chapter 371, Statutes of 2005). This Plan will provide a well needed "road map" for stimulating the development of non-petroleum and alternative transportation fuels needed to achieve our state's petroleum reduction, transportation fuel supply diversification and climate change goals. The first phase of the Plan, the "full fuel cycle" analysis was completed in June 2007. It will form the technical basis for the establishment of the Low Carbon Fuel Standard, which the Governor has directed the Air Resources Board to put in place.

Another equally important personal goal is to make significant progress in achieving the state's bioenergy goals (for biomass power, biogas and biofuels). As Chair of the Bioenergy Working Group, I was instrumental in the Governor's approval of Executive

Order S-06-06 on Biomass, in April 2006. This Order set statewide production and use targets for biofuels and biomass power. Biomass has a target of providing 20 percent of California's renewable generation mix by 2010. While progress is being made in reaching these targets, much more work is needed.

Biomass power currently comprises nearly 19 percent of total renewable energy in California, which is close to meeting the target requiring that biomass comprise 20 percent of the State's Renewable Portfolio Standard (RPS) requirements by 2010. However, as the total base of renewable energy capacity increases over time, the percentage of biomass could decrease, unless technology breakthroughs occur and additional state support is provided. Use of California biomass materials can add materially to our portfolio of renewable electricity sources.

While the Low Carbon Fuel Standard will stimulate a second generation of emerging biofuels, more effort is needed to encourage the use of California's waste residues (i.e. agricultural, forestry and urban wastes) for biofuels production. Since this industry is still developing, additional state actions are needed for the industry to succeed.

As an active member of the Governor's Climate Action Team, I oversee the formulation of many of the energy-related strategies needed to achieve the Governor's greenhouse gas reduction targets. The Energy Commission is responsible for a range of climate reduction strategies, which include energy efficiency, renewable energy, and low-carbon and alternative transportation fuels. In addition, the Commission has adopted an emissions performance standard which limits greenhouse gases from power generation, as required by Senate Bill 1368 (Perata, Chapter 598, Statutes of 2006). Success of our climate change measures can be quantified in terms of their equivalent carbon reductions.

Progress in these goals as well as all Energy Commission goals is documented in the Commission's Integrated Energy Policy Reports in terms of both acceptance and approval and then the implementation of the policy recommendations made in the IEPR.

2. *What have been your most significant accomplishments as a member of the commission?*

Based on my personal experience as both an air quality regulator and an Energy Commission, I feel that I have been effective in balancing the need for affordable energy supplies with the state's environmental and climate change goals. Throughout my entire career, I have tirelessly advocated a transition away from petroleum fuels to a future which relies on alternatives to petroleum as well as advanced and efficient vehicle technology and efforts to reduce vehicle miles traveled (VMT).

For that reason, I consider the July 2003 completion of the Joint Report by the Energy Commission and the Air Resources Board (ARB) on *Reducing California's Petroleum Dependence* to be a significant personal accomplishment. This landmark report, which the Legislature required under Assembly Bill 2076 (Shelley, Chapter 936, Statues of

2000), recommended a two-pronged approach to reducing the state's dependence on petroleum fuels: doubling vehicle fuel economy and increasing the use of alternatives, such as electricity, natural gas, renewable diesel, and biofuels.

Finding a long-term and stable funding source for alternative fuels and advanced technology development in California remains an unfulfilled personal commitment of mine. I find some irony that Congress is now pursuing changes to federal Corporate Average Fuel Economy (CAFÉ) standards that are similar to those which the Energy Commission and the ARB recommended in 2003.

I served as the Presiding Member of the *2003 Integrated Energy Policy Report (*IEPR*),* the first IEPR produced and as the Associate Member of both the 2004 interim IEPR update and the full *2005 IEPR.* These reports document the state's official energy policy and lay the foundation for important legislative initiatives and administrative actions on energy efficiency, renewable energy, natural gas, and transportation fuels. Furthermore, I consider the timely completion and policy content of these reports as important career accomplishments.

As stated above, the Governor signed Executive Order S-06-06 on Biomass, in April 2006, at the urging of the Working Group which I currently chair. The Governor subsequently released the Bioenergy Action Plan in July 2006. As documented in the just released *Bioenergy Action Plan: Progress to Plan* report, good progress is being made by the Working Group members in achieving the state's bioenergy goals. I consider this bioenergy program and the steady progress being made a source of personal satisfaction and a key accomplishment. However, much more needs to be done to harness our state's agricultural, forestry and urban wastes as a source of energy production by addressing regulatory uncertainty, advancing new conversion technologies, and valuing the carbon and other public benefits of waste reduction.

I chaired a Climate Change Advisory Committee for the Energy Commission, as provided in Public Resources Code Section 25730 (f), which was an important and early accomplishment of the state's efforts to reduce greenhouse gases. This Advisory Committee was composed of high level representatives from the energy industry, the state's utilities, government, academia and public interest groups, and supported the establishment of the climate change targets for California. The Advisory Committee recommended a number of specific strategies for reducing greenhouse gas emissions, which have become part of the state's response to Assembly Bill 32.

Finally, the development of the Energy Commissions highly acclaimed Climate Research Program and establishment by the Commission of the State's virtual Climate Research Center with the University of California (UC) President's Office, UC Berkeley and Scripps Institute of Oceanography during the course of my first term are significant accomplishments.

Renewable Portfolio Standard:

The commission is required to assess and forecast all aspects of the energy industry, including supply, production, transportation, delivery, distribution, demand, and prices every two years and to update this assessment every other year. The commission's 2006 assessment included a review of the California Renewable Energy Portfolio Standard program which was enacted by the Legislature in 2002 with the goal of obtaining 20 percent of the state's electricity from renewable resources by 2010. The 2006 assessment identified barriers to meeting the state's renewable energy goals. Issues included the availability of supplemental energy payments, the complexity of the program, insufficient attention to potential renewable energy contract failures, and lack of progress in repowering wind generation.

3. *Many of these barriers are partly or wholly within the jurisdiction of the commission to address, or at least to bring to the attention of other energy agencies within the executive branch. What actions have you or the commission taken to reduce complexity, to create greater certainty over the availability of supplementary energy payments, or to provide assistance or incentives for repowering of wind generators?*

I have consistently supported a number of Energy Commission actions aimed at stimulating renewable energy development. I either chaired or was the associate member of the first three *Integrated Energy Policy Reports* (the *2003, 2004, and 2005 IEPRs*), in which the Energy Commission proposed and supported the ambitious renewable goals for California. I have been, and I continue to be, a strong supporter of and advocate for renewable power.

My most direct involvement in renewable power development has related to biomass power issues during the past several months. In August 2005, I was asked by the Governor to revive the Bioenergy Interagency Working Group (Working Group) and to serve as its chairman. The Working Group's purpose is to address issues and barriers affecting the development and deployment of biopower, biogas, and biofuels and to develop an action plan to address these issues.

On April 25, 2006, the Governor's Executive Order S-06-06 on Biomass established targets for the production and use of biofuels and biopower and directed state agencies with important biomass connections to work together to advance biomass programs in California, while providing environmental protection and mitigation. In July 2006, the Governor publicly released the State of California's Bioenergy Action Plan to carry out the provisions of the Governor's Executive Order, and to establish commitments by the member agencies to carry out the Plan.

On June 11, 2007, the Working Group conducted a one-day public meeting where the member agencies reviewed their progress in achieving the objectives of the Bioenergy Action Plan. The Working Group also solicited public comments to identify and address

market barriers and propose solutions for expanding sustainable biomass development in California. A summary of the Working Group's first year accomplishments and a detailed discussion of key outstanding issues have been recently made available on the Energy Commission's web page.

I did participate in the review and adoption of the 2006 *IEPR Update*, and fully support the recommendations relating to renewable energy development in that report. Also, as part of the *2007 IEPR*, the Energy Commission is evaluating the use of feed in tariffs as a regulatory structure to reduce complexity and increase market certainty to achieve the state's renewable goals post 2010. Incentives, such as feed-in tariffs, would support renewable energy development and are especially applicable to biomass projects.

In March 2007, I participated in the Energy Commission's review and adoption of updates to the various renewable program guidebooks – *Renewables Portfolio Standard Eligibility Guidebook, New Renewable Facilities Program Guidebook, Overall Program Guidebook, Existing Renewable Facilities Program Guidebook,* and *Consumer Education Program Guidebook*. These guidebooks address how to certify an RPS-eligible resource, how to apply for supplemental energy payments, and how the Energy Commission verifies renewable procurement to satisfy RPS-targets.

The revised guidebook changes, which the Commission adopted, reflect changes in the state law, market developments, regulatory refinements at the CPUC, and lessons learned from implementing the program. The Commission made one change to the guidebook, which allows biomass injected into a natural gas pipeline and used to fuel a natural gas power plant to be RPS eligible. I advocated for and supported this change which supports the state's effort to increase in-state bioenergy production, and many of the state's utilities are increasing their efforts to use biogas to fuel power generation.

These changes are an example of the Energy Commission's quick response to implement changes in state law and to improve the simplicity and transparency in the Energy Commission's public process. Specifically, the *RPS Eligibility Guidebook* includes updates to implement SB 107, SB 1250, and AB 2189 which were signed in 2006 and went into effect on January 1, 2007. The guidebooks were collectively revised in a single proceeding at the Energy Commission.

The revisions to the *RPS Eligibility Guidebook* is also an example of the Energy Commission's efforts to accelerate the program, both by being responsive in a timely manner and also by taking action to broaden the resources available to retail sellers working to meet the RPS obligations. For example, new guidelines were developed to allow biogas generated from dairies and injected into natural gas pipelines to be eligible for the RPS, when the biogas is used to generate electricity.

Finally, regarding the issue of Supplemental Energy Payments (SEPs), I see a value in having these incentives based on a transparent and public process which the Energy Commission now provides. We continue to recommend the creation of an escrow account into which SEP funds can be deposited. Furthermore, the Energy Commission

continues to recommend the need for incentives to support the re-powering of aging wind turbines. We are funding a substantial body of research to support advanced wind turbines, which will lower cost and improve reliability.

4. *Please explain the commission's role in the siting of transmission for renewable energy. What steps have you taken as a commissioner to expedite or facilitate siting of electricity transmission lines for renewable energy?*

The Energy Commission plays an important role in the review and licensing of transmission lines needed to support renewable energy development. The Energy Commission has permitting jurisdiction over large thermal power plants and the associated electric transmission lines from the power plant to the first point of interconnection to the electric grid. Thermal power plants include solar thermal and geothermal facilities.

This permitting authority is important for renewable development in California because the Energy Commission is anticipating about ten solar thermal power plant applications, representing approximately 3,000 megawatts of new generating capacity through 2008. These solar projects tend to be located in remote areas, and they will require new transmission infrastructure to interconnect to the existing electrical grid.

The majority of solar thermal projects will be located on federal public lands. In this regard, the Energy Commission is developing a Memorandum of Understanding (MOU) with the California Desert District staff of the Bureau of Land Management (BLM) for joint review of the solar thermal generation projects proposed on public lands.

As a Commissioner, I will be assigned to participate in the review and licensing of many of these renewable power plants and associated transmission lines. For example, I served as Associate Member on the Blythe Energy Project Transmission Line Project that was certified by the Commission in 2006. When built, this transmission line could help development of renewable resources, especially if the line is upgraded above its current 230-kilovolt level.

In 2005, the Energy Commission adopted the *Strategic Transmission Investment Plan,* which identified key transmission projects, including three that would help meet renewable energy targets. As the Associate Member of the *2005 Integrated Energy Policy Report*, I supported those recommendations.

With the new authority granted under Senate Bill 1059 (Escutia, Chapter 638, Statutes of 2006), as recommended in *2005 IEPR* and *Strategic Plan*, the Energy Commission has started developing regulations for designating transmission corridors, which will facilitate future development of transmission for renewable energy sources. The Siting Policy Committee, composed of Commissioners Geesman and Byron, is overseeing the development of those regulations. The Energy Commission is scheduled to adopt corridor designation regulations in late 2007.

The corridor designation authority is an important step; however, more needs to be done to establish a comprehensive statewide transmission planning process. This process would provide regulatory certainty in the permitting process and facilitate the approval of needed transmission projects, including those needed to access renewable resources. The corridor designation process will inform subsequent transmission permitting by addressing important issues early and by narrowing the focus of the permitting process.

Federal corridor designation is also underway consistent with Section 368 of EPAct-05 for corridors on federal lands, and like the state corridor designation process, is scheduled to be implemented in late 2007. At the request of the Resources Agency the Energy Commission became a cooperating agency to coordinate and provide information to guide corridor designation on federal lands in California. The Commission's process will ensure that corridors designated on federal lands within California take into account the state's unique environmental and land use concerns, energy infrastructure needs, and renewable policy goals.

Consistent with the intent of SB 1059, it is important that the results of future Energy Commission corridor designations are utilized to inform subsequent transmission line permitting processes. Integrating future Energy Commission corridor designations and the supporting analyses with the transmission permitting process will ultimately help facilitate permitting by improving the transmission permit applications and reducing the level of analysis required in permitting.

I support the recommendation from the *2005 Strategic Plan* to collaboratively establish a comprehensive statewide transmission planning process with the CPUC, the California Independent System Operator (Cal ISO), other key state and federal agencies, local and regional planning agencies, investor-owned utilities (IOUs), publicly owned utilities (POUs), generation owners and developers, the public, and other interest groups.

The Energy Commission among others has criticized the existing transmission permitting process. I support the Energy Commission's recommendations to transfer the permitting of all new bulk transmission lines to the Energy Commission, using the Energy Commission's power plant permitting process as the model. Such a move as part of a comprehensive transmission planning process would help ensure consistency between transmission planning and permitting, and it would help make for a more streamlined process in the future for bringing new transmission projects online.

The *2005 Strategic Plan,* in which I participated, recommended that the Energy Commission establish a comprehensive statewide transmission planning process, in close collaboration with the CPUC, the California Independent System Operation, other key state and federal agencies, local and regional planning agencies, utilities, generators, the public, and other interest groups. Support for the State Renewable Portfolio Standard (RPS) goals was one of the principal purposes of this planning process.

Finally, the Energy Commission is conducting a number of studies and research activities to facilitate the expansion of transmission lines to accommodate renewable energy resources. Through our Public Interest Energy Research (PIER) program, the Commission is funding technology and resource assessments, identifying new transmission access corridors (both inside California and in neighboring states), and coordinating statewide and regional efforts to plan for new transmission lines. Through our Wind Energy Collaborative, we are working with stakeholders in the Imperial Valley and the Tehachapi to identify electrical transmission needs.

5. *With the passage of landmark greenhouse gas emission legislation last year, efforts to build new renewable energy and to displace fossil fuel energy will have to be redoubled. Do you support accelerating investments in new renewable energy? If so, how?*

Yes, I do support accelerating both state government and private sector investments in new renewable energy development. I have chaired the Commission Committee overseeing our policies and programs regarding climate change since my arrival at the Commission, and I recognize the importance of renewable energy as a source of greenhouse gas reductions. The 2003 IEPR, the 2004 interim update and the 2005 IEPR, in which I was directly involved, are aggressive in their tenor and tone regarding the need to accelerate renewable electricity in California, highlighting the key issues that need to be addressed.

For several years I served on the Commission's Renewable Policy Committee, and I wholeheartedly support the comprehensive set of recommendations for addressing the impediments to near-term development of renewable energy sources that the Commission adopted in the *2006 IEPR Update*. These recommendations addressed the following market barriers:

- Ongoing transmission barriers, the complexity and need for increased transparency in the RPS program,
- The risk of contract failure and issues of timely completion of projects, and
- The need for more progress in wind re-powering.

As stated above in my response to question 3, I have supported proposed changes to the Energy Commission's *Renewables Portfolio Standard Eligibility Guidebook*, *New Renewable Facilities Guidebook*, and *Overall Program Guidebook* which are helping retail electricity sellers reach their RPS goals.

In addition, these guidelines were developed to allow biogas generated from dairies and injected into natural gas pipelines to be eligible for the RPS, when the biogas is used to generate electricity. I have a particular interest in seeing more biogas (produced from agricultural wastes) used as a fuel for electricity, as a means of meeting both State RPS requirements and the state's bioenergy goals. Harnessing biogas from the state's dairies is an effective means of meeting state goals and of generating revenue for the

state's dairy industry. We are also working hard to address groundwater and air quality issues that are facing the dairy industry.

Further, the *2006 IEPR Update* provides a complete list of outstanding issues that are important to renewable energy development in meeting the 20 percent RPS goal by 2010:

- Alter the supplemental energy payment procedures to reduce contracting complexity of projects
- Maintain the penalties for utilities that do not meet RPS goals
- Make the RPS process more open and transparent
- Recognize the important value of renewable resources as both a hedge against future natural gas price volatility and a vital component of the state's greenhouse gas reduction strategy in "setting the bar" (market price referent calculation) for selecting renewable projects
- Utilities should be required to accept all RPS projects that meet the market price referent or document why they did not
- Utilities should be required to procure a reserve margin of renewable projects to protect against contract risk in meeting the 20% RPS by 2010
- The state should consider incentives to encourage repowering of aging wind facilities

The Energy Commission recommended and I support the long term RPS goal of generating 33 percent of the state's electricity from renewable resources by 2020. The Commission is in the process of evaluating options to address the key outstanding issues which include:

- The relationship between renewable energy, renewable energy certificates, and carbon emission trading in implementing greenhouse gas reductions called for in Assembly Bill 32
- Alternative structures to meet 2020 RPS goals, including whether revised system benefit charge mechanisms or feed-in tariffs would spur additional renewable development
- Changing or eliminating the market price referent/supplemental energy payment award structure

I will be reviewing these issues further as I participate in the *2007 IEPR* proceedings.

Gasoline and Diesel Supply and Demand

The 2005 Integrated Energy Policy Report (IEPR) also found that the demand for transportation fuels in California is increasing and that the state's dependence on imports is increasing along with it. The commission and other sources now estimate that 41 percent of climate emissions come from transportation sources. The 2006 IEPR Update recommended that the "single largest opportunity" for reducing transportation

fuel consumption was through smart growth, which it states would reduce consumption by billions of gallons of gasoline per year.

6. *Please describe what the commission means by smart growth. What opportunities do you believe exist within the state to promote smart growth policies? Has the commission shared its recommendations on smart growth with other agencies in state government who more directly oversee land use? If so, what actions have they taken to implement the commission's recommendations?*

The Energy Commission has defined "smart growth" to mean the application of development principles that make prudent use of resources and create low impact communities through enlightened design and layout. Smart growth principles are intended to minimize traffic congestion and vehicle miles traveled (VMT), encourage development in existing population centers, minimize both the costs of living and taxes, encourage efficient use of all forms of energy, maximize residential neighborhood livability, and keep existing open spaces open.

If successfully applied nationwide, smart growth would lead to improved living standards, millions of tons of annual CO_2 reductions, improved air quality, reductions in transportation fuels use, and hundreds of billions of dollars of annual savings through wide ranging efficiency improvements.

The Energy Commission has done extensive work with land use planning agencies and organizations that influence land use planning. The Energy Commission developed and supports a geographic information system land use planning software program called Planning for Community Energy, Economic Environmental Sustainability ($PLACE^3S$) to help smart growth planning throughout California. In 2002, the Energy Commission upgraded $PLACE^3S$ to an internet-based version with improved processing speed and accuracy. This tool allows local land use decision makers to compare potential future outcomes using different growth and land use assumptions. The Energy Commission's Research program has numerous research efforts underway to further smart growth goals.

Numerous local governments, public utilities, investor owned utilities, and non-governmental organizations participate in Energy Commission proceedings to further smart growth. The *2006 IEPR Update* focused on smart growth and the relationship between energy and land use. That report contains extensive examples and analysis of local programs to implement smart growth principles, and ongoing Energy Commission projects in support of those efforts.

We are engaged in a similarly vigorous examination of the issue in our *2007 IEPR*. On June 26, 2007, we held a workshop on Land Use, Energy and Climate, where we had some of the top land use planners, academics and speakers in the country offering recommendations to the State. Based upon the workshop's outcomes and an extensive year-long research effort we expect to articulate strong recommendations on how to address these issues.

Through our involvement in the Climate Action Team, we have been collaborating with other state agencies, including Cal Trans, the Office of Planning and Research, and the Department of Housing and Community Development, through a Land Use Subgroup, which Energy Commission Chairman Jackie Pfannenstiel is leading. This subgroup is coordinating climate change mitigation and adaptation efforts in cross-cutting areas related to local government and land use activities. The Sub-Group is working with local governments and other stakeholders to develop the necessary planning tools and programs to achieve the State's climate and energy goals.

One example of our work with other agencies is our assistance to the California Transportation Commission's (CTC) on its update of the regional transportation plan (RTP) guideline. In January 2007 Senator Perata asked the CTC to update the RTP guidelines to include GHG reduction measures. At the Senator's request, the Energy Commission staff is now assisting in this effort, and the CTC has joined the Land Use Subgroup.

The Energy Commission has entered into partnerships with national, regional and local government entities to produce case studies and tools that will help local governments and their partners to develop plans to reduce energy usage and GHG emissions. These partnerships will produce the following, but not limited to, products:

- Model Regional Energy Strategy
- Model General Plan Energy Element
- Model Local Climate Action Plan
- Alternative Fuel Infrastructure Toolkit
- An annual conference on smart growth and climate change
- Local Government GHG analysis tool

The Energy Commission is engaging in a new area of research that will look at the integrated relationships between land use, human behavior, urban design, environmental impacts, and energy under its new Sustainable Communities research program. I welcome the legislature's interest in these important issues, and I look forward to helping craft a solid approach as we move forward.

Electricity Supply

As the years 2000 and 2001 have shown, California is vulnerable to electricity shortages. Californians still pay, on average, the third highest rates in the nation. While the commission is currently reviewing applications for 12 electric generating plants, the development of new energy supplies is not keeping pace with the state's increasing demand. The commission has reported that the state's energy infrastructure may be unable to meet the state's energy delivery needs in the near future. In 2004, transmission congestion and related reliability services cost California consumers over $1 billion.

According to the commission's March 16, 2007, Energy Facilities Status Report, there are 12 electricity generating projects that have been approved, but are on hold for construction, for a total of 7,413 megawatts of capacity that is not being built. There are another six electricity generating projects that have been approved, but will not be built, that would have had 1,393 megawatts of capacity. Thus, it is likely that the state will not have 8,806 megawatts of capacity that it thought would be built.

7. *What do you believe the state and, in particular, the Energy Commission should be doing to ensure an adequate and affordable supply of electricity?*

First of all, an important function of the Energy Commission for ensuring adequate electricity supply is our power plant authority. The Commission is responsible for the review and licensing of thermal electric power plants, sized at 50 megawatts (MW) or greater. The Commission has approved licenses for over 8,000 MW of new capacity, and approximately 5,500 MW of additional generation are currently undergoing review.

Assuring adequate and affordable electricity supply involves a portfolio of different actions, not just building conventional power plants. The Energy Commission has taken a number of actions and has consistently recommended programs and policies to ensure that an adequate supply of affordable electricity will be available. As a result, the electricity situation has improved dramatically since the energy crisis of 2001. Despite our best efforts, customers still feel vulnerable to market manipulation and capacity shortfalls.

In the event of an electricity shortfall or dangerously low reserve margins, which occur during summer peak periods, there are back stop measures in place. For example, California has instituted a number of load curtailments programs, which allow large industrial customers to receive preferential rates in exchange for allowing load service curtailment during peak periods. Public information programs like Flex Your Power can be called upon to alert consumers to conserve, if reserve margins fall too low. Other examples include time-of-use rates (higher rates during peak periods) and air conditioner cycling programs which are helpful in curtailing electricity demand.

Recent analysis by Energy Commission staff indicates that the probability of not having sufficient resources for this summers peak days is extremely low. Furthermore, the Energy Commission has permitted sufficient electrical generating capacity to meet forecasted demand. However, the lack of long term contracts to assure financing of new construction has been the problem for many of the already permitted plants. This issue is tied directly to the State's electricity procurement process, not the permitting of plants.

In my view, the Energy Commission and the CPUC should continue to work collaboratively to ensure that the state's utilities procure adequate electricity resources. For example, the Energy Commission and the CPUC have worked to ensure that the State's Renewable Portfolio Standard is carried out and as indicated earlier more must be done to assure we meet these goal. The Energy Commission in the *2003 IEPR*

called out efficiency programs as the most important electricity supply strategy, and the two Commissions have since created the joint Energy Action Plan which made efficiency their top priority.

The importance of energy efficiency and renewable resources to electricity supply cannot be over emphasized, especially in light of California's efforts to reduce greenhouse gas (GHG) emissions. I strongly believe that ongoing joint efforts by the two commissions to expand the role of energy efficiency and demand response programs should be continued and expanded.

Distributed generation policies and technologies need to be given greater emphasis in California's electricity future. Cogeneration, providing onsite electricity and heat, usually industrial process steam, offers many attributes to our system. Central Heat and Power facilities similar to cogeneration but more commercial building complex oriented offers similar benefits. Finally, greater efforts need to be made to use waste heat, available in many operations, as a source to generate electricity.

8. *How should the underinvestment in transmission infrastructure be addressed?*

Underinvestment in California's transmission infrastructure is one of the key reasons for ongoing reliability, cost and congestion problems in the state's electricity system. I would agree that this issue requires serious attention by policymakers at the Energy Commission and at the CPUC.

While California has taken modest steps in planning and permitting new transmission facilities, the state still suffers from inadequate infrastructure following years of underinvestment in transmission lines. California must continue to improve its transmission infrastructure planning and permitting processes and coordinate the related actions of the CAISO, Energy Commission and the CPUC in order to ensure development of a reliable, efficient and flexible transmission system, and facilitate achievement of the state's RPS goals.

Underinvestment results from the challenges associated with permitting new energy infrastructure, including transmission lines, which is an inherently difficult process in California. Besides public opposition, transmission is not normally built incrementally and large amounts of additional transmission capacity are constructed at one time. As a result, there is a high initial cost although the cost of permitting may represent a small impact on the cost of service. There are also long planning, permitting and approval cycles.

The Energy Commission has repeatedly broached this problem in its policy documents. As a member of the *2005 IEPR* Committee, I joined other Commissioners in advocating state level authority for the siting of transmission lines and, frankly, that the CEC be given the task to break the long-standing log jam. I understand that there has been some progress with the CPUC approval of a number of key transmission projects and

upgrades. I will continue to support a coordinated approach to ensure that the needed transmission infrastructure is built.

The Energy Commission has been working on developing a more coherent and efficient process for increasing investment in California's infrastructure since 2003. Historically the CPUC has looked only at the narrow, short-term ratepayer costs or benefits of the individual IOUs that propose transmission lines, without considering their broader state-wide long term reliability, economic and environmental benefits. The state must consider the broader long-term strategic benefits of these projects in its planning and permitting processes to ensure the development of a reliable, flexible and effective transmission system.

To establish a rate-setting structure that considers long-term state-wide and regional transmission infrastructure needs, with restructuring of the electricity industry in the late 1990s the Federal Energy Regulatory Commission (FERC) was granted sole jurisdiction over the financial regulation of IOU investments within the CA ISO-controlled transmission network. In addition, the CA ISO was given the authority to lead transmission planning within its control area. Therefore, it is essential that the CAISO play a central role in planning the state's transmission system.

Recognizing the need for a state role in transmission planning, Senate Bill 1565 (Bowen, Chapter 692, Statutes of 2004) elevates the Energy Commission's formal role in transmission planning, requiring the Energy Commission to adopt a strategic transmission investment plan for the state's electric transmission grid as part of its biennial Energy Report process. The strategic plan recommends actions necessary to implement investments needed to ensure reliability, relieve congestion, and meet future growth in load and generation, including renewable resources.

To facilitate this, the Energy Commission, in 2005, instituted a comprehensive statewide strategic transmission planning process that is forward-looking, involves all of the relevant utilities, market participants, the CPUC and other local, state and federal agencies and builds upon the most recent Cal ISO grid plan to develop the strategic transmission investment plan for the state.

Understanding the critical importance of linking transmission permitting decisions with the strategic transmission investment plan, in 2005 the Energy Commission proposed legislation (SB 1059) to establish a transmission corridor designation process, which was passed and signed by the Governor in 2006. That process, which the Commission is now implementing, is designed to establish transmission corridors for future use.

Such corridors will be designated when they are found to be consistent with the state's long-term transmission infrastructure needs identified in the most recent strategic transmission investment plan, and have been subject to an environmental assessment, including alternative corridors and "non-wires" alternatives. Addressing these critical issues in the corridor designation process will connect strategic planning outcomes with

permitting decisions. It will allow the CPUC to streamline the permitting process for individual transmission line projects that are proposed within designated corridors.

9. *To what extent do you believe the state should continue to rely on private sector planning and financing to meet energy resource needs?*

Forecasting and planning for new energy sources and infrastructure should continue to involve both State and private sector responsibilities and activities. The financing of specific energy infrastructure projects must involve the private sector. As you are aware, the CPUC reviews and approves investments by the investor-owned utilities in new facilities, evaluating the reasonable of these expenditures and the benefit to ratepayers. Most of the financial risks of energy projects are born by the private sector, however.

Natural Gas Supply

Natural gas has increasingly become the state's fuel of choice for generation of electricity. Several companies have proposed siting new liquefied natural gas facilities in or close to the state. At the same time, natural gas prices have become volatile and have more than doubled since 2000. California depends upon natural gas to generate about half of its electricity.

10. *Has the commission assessed the need for increased natural gas supply or how natural gas fueled electricity should be viewed as part of the state's long-term climate goals? If so, what conclusions or recommendations has the commission made? Do you concur?*

Yes, the Energy Commission has continually assessed California's natural gas demand and supply and the need for increased natural gas supply as part of our biennial Integrated Energy Policy Report (IEPR) proceeding. As the presiding member of the Energy Commission's Natural Gas Committee, I oversee the planning and preliminary work on this natural gas assessment. The Energy Commission chairs the Natural Gas Working Group, composed of State agencies involved with natural gas either as regulators, consumers or policy advisors. This group was formed at the time of the electricity crisis and has monitored natural issues and helped to facilitate new infrastructure projects.

California was an early adopter of natural gas as a cleaner burning fossil fuel for industrial use and particularly for electric generation. Being relatively close to North American supply sources facilitated our demand and has been driven heavily by air quality goals. The Energy Commission was early to recognize the CO_2 emission benefits of natural gas over other fossil fuels as indicated in its IEPR recommendations regarding California's policy for the importation of electricity.

I agree with the conclusions reached in our most recent assessment, which was completed in early June 2007. We concluded that the growth in California's natural gas demand will be slower than in the rest of the nation. This slower demand growth is largely the result of the state's aggressive energy efficiency and renewable energy programs. We also found that U. S. natural gas supplies are declining, even with an expanding number of wells being drilled. The gap between U.S. demand and domestic supplies continues to widen and this gap could be significant within the next ten 10 years.

The Energy Commission is forecasting that California's demand for natural gas for power generation will increase more quickly than demand in other sectors of the economy. The June 2007 draft assessment indicates that the demand for gas in California's electricity sector is expected to grow at a higher rate of 1.1 percent per year through 2016, compared to 0.5 percent for other sectors. This change is a result of the increased use of natural gas in power plants and movement away from more carbon intensive technologies, such as coal, as a way of reducing GHG emissions.

Climate change policies are also expected to increased natural gas use in the electricity sector. Assembly Bill 32, the climate change policies of other western states, and the potential for action on climate change at the federal level, are likely to affect new coal facilities. Many of these coal plants were included in utility resource plans, and these plants are now not likely to be built. In addition, California's aggressive RPS will offset the demand for natural gas in electricity, as the state's utilities reach the RPS goal of 20 percent renewable generation by 2010.

Declining gas supplies in the face of increasing natural gas demand will continue to leave our state vulnerable to high natural gas prices. The Commission's most recent natural gas assessment identified the competing demand for natural gas in other parts of the U. S. as a critical near-term issue. The concern is that higher demand elsewhere in the country and in the world will bid up natural gas prices.

California will need to obtain additional natural gas supply from diverse sources, including both domestic and international supply sources. One option is the possible importation of liquefied natural gas (LNG) from Mexico, Indonesia or other foreign sources. Our natural gas assessment includes a comprehensive evaluation of future natural gas supplies and identified several proposals for LNG import facilities along the West Coast (there are projects being proposed at offshore locations in California and Oregon, for example).

11. *Should the commission take steps to ensure that the state does not become over-dependent on natural gas? Should it mitigate price fluctuations to protect utility customers?*

The Energy Commission continues to support a number of policies and programs to prevent over-reliance on natural gas as a way of mitigating higher natural gas prices.

- Pursuing and funding cost-effective energy efficiency and demand reduction programs
- Offering energy audits and low-interest loans to schools, hospitals and other public institutions who are large natural gas consumers
- Establishing aggressive efficiency standards for buildings and appliances
- Promoting cogeneration and combined heat and power in industrial and commercial applications
- Conducting research, development and demonstrations (RD&D) on new technologies that improve natural gas efficiency
- Identifying and advocating diversity in natural gas supply sources (such as Liquefied Natural Gas which is being pursued by several project proponents)
- Ensuring that the needed natural gas infrastructure (i.e. pipelines, compressors and distribution lines) are built.

When taken together, actions on both the demand side and the supply side can help to mitigate the effects of higher natural gas prices on consumers. More information on each of these items is provided below in the response to question 12.

12. *What actions do you recommend to balance new natural gas supplies with more efficient use of this fuel and greater investment in alternative technologies like solar thermal water heating?*

As stated above, California will need large and increasing natural gas supplies to meet the forecasted demand for the foreseeable future. We expect that even with aggressive energy efficiency and renewable energy, our state's natural gas demand will remain high. We need to take all feasible means of improving efficiency of natural gas use, expanding renewable power, and encouraging the use of combined heat and power, where use of natural gas is unavoidable.

I support the actions recommended by the Energy Commission in its *2003 and 2005 Integrated Energy Reports*, as they related to increasing the efficiency of natural gas use. Energy efficiency is the best and least costly option for reducing demand, and provides a hedge against increasing natural gas usage. Actions should be taken both on the demand side and on the supply side to address growing natural gas demand. Solar water heating is one approach for reducing natural gas demand that has merit, if cost-effective for a specific application.

California imports more than 80 percent of the natural gas it uses, producing less than 20 percent of its natural gas within the state, which leaves the state vulnerable to supply disruptions and price shocks. For this reason, it is important to increase the efficiency with which we use natural gas, decrease or slow the growing demand for both natural gas and electricity, and increase our supply options, including LNG as one of the few

new sources of natural gas supply. California should be taking aggressive action in all three areas.

The preferred loading order, which the Energy Commission and the CPUC jointly adopted, has established a hierarchy of preferred energy resources for California, starting with energy efficiency and renewable resources, and then moving to clean and efficient new fossil resources. Use of solar water heating, where cost-effective, is another good approach for reducing natural gas use in residential and commercial applications.

The building efficiency and appliance efficiency standards are major tools to reduce the need for both electricity and natural gas. Given California's reliance on natural gas as a primary fuel for electricity generation, electricity savings translate directly into natural gas savings.

The Energy Commission's efficiency programs also provide energy audits and low-interest loans to local agencies and schools to improve their energy efficiency. The energy audits identify both natural gas and electricity saving opportunities, and the Energy Commission provides loans to implement these opportunities, with repayment from the resulting savings on energy bills. In addition, the building efficiency standards and appliance efficiency standards are also developed to reduce the need for both electricity and natural gas. Given California's reliance on natural gas as a primary fuel for electricity generation, electricity savings translate directly into natural gas savings.

The Energy Commission's ability to continue to strengthen appliance efficiency standards is at times hampered by the potential for federal preemption of California appliance standards. The Energy Commission must obtain a waiver from the federal Department of Energy (DOE) to enact appliance standards more stringent that those at the federal level. Because DOE denied the Energy Commission's waiver request, the Energy Commission recently filed suit in federal court to overturn the DOE action. The standard, if enacted, would save substantial amounts of electricity, natural gas and water, and would also enhance efforts to curb greenhouse gas emissions.

The Energy Commission is supporting research on increasing the efficiency of generators. Because much of the current need for new generation resources in California relates to our need to meet peak demand, new efficient peaking plants can provide an important improvement. While research into this technology has been supported through the PIER program, we need to find effective means to help with the demonstration and deployment of new, more efficient technologies.

Another area that has the potential to improve overall electricity system efficiency is increased use of efficient distributed generation, which can also be used in co-generation applications, which has the potential to significantly increase efficiency and reduce greenhouse gases. I believe that much can be done to increase the penetration of distributed generation, although action will need to be taken to ensure that new

distributed generation meets efficiency performance standards and competes in a level procurement playing field that does not grant undue compensation.

The Energy Commission also has an active natural gas research program, which focuses on efficiency. The program identified opportunities including residential and commercial natural gas water and space heating technologies, commercial food service equipment, and gas appliances such as cooking and clothes drying.

While these measures will help moderate demand for natural gas in California, the increased demand across the country and the declining production in North America makes it prudent to seek alternate sources of natural gas. Increased supply options will help mitigate volatility in prices. LNG offers the main alternative, and the Commission is on record supporting development of LNG terminals on the West Coast in an environmentally responsible manner. We have also actively engaged with other agencies that have an interest in possible LNG projects, and have lead the LNG Interagency Working Group since it's formation in 2002.

These actions are complementary and all are needed to help provide a balanced energy portfolio for the state. While increased efficiency and renewable resources will be critical for meeting that state's GHG reduction goals, the availability of reliable and affordable natural gas supplies will also be important over the next decade as California transitions to a less carbon-intensive future.

Energy Efficiency

Under the Warren-Alquist Act, the commission is responsible for adoption and enforcement of state energy efficiency building standards and appliance standards.

13. *Are the commission and the state doing enough to ensure that energy efficiency standards meet the state's energy efficiency and climate goals? Should additional actions be taken to strengthen the state's efficiency standards?*

I strongly support efforts to strengthen California's energy efficiency standards. California's building and appliance efficiency standards are a model for other state standards. California as a state uses 60 percent less of the electricity per capita, than the nation as a whole. Much of our success is attributable to the energy efficiency work of the Energy Commission over the past 30 years.

The Energy Commission is in the process of updating its Building Standards, which are expected to be adopted in early 2008 and become effective in 2009. The Commission also intends to begin work in 2008 to develop new appliance efficiency standards. I support these standards since they are critical to meeting the state's climate protection goals.

The Energy Commission has established strong linkage between energy efficiency and solar energy, and we are working to simultaneously promote both approaches in the Building Standards. Under the California Solar Initiative and Senate Bill 1 (Murray, Chapter 132, Statues of 2006), the Energy Commission has established the New Solar Homes Partnership (NSHP). We also adopted the Guidebook for this program in December 2006, and recognize the importance of transitioning the building industry to delivering highly energy efficient solar homes as a mainstream approach in new building construction.

As a Commissioner, I supported the high priority placed on energy efficiency in the development of the "loading order" established as state energy policy in the Energy Action Plan. The NSHP requires a minimum level of energy efficiency that exceeds the Building Standards before granting any incentives for solar photovoltaics. The program also includes, on a voluntary basis, a second more aggressive level of efficiency that results in higher incentives. The Energy Commission is actively encouraging builders to achieve this preferred "Tier II" efficiency level.

Should additional actions be taken to strengthen the standard? Yes, absolutely. Increasing our efficiency gains remain the most cost effective mechanism available for meeting our climate change goals. Achieving the significant reductions in greenhouse gas emissions needed to stabilize the climate will require significant national and international attention on achieving reductions through substantial improvements in the energy efficiency of buildings and appliances.

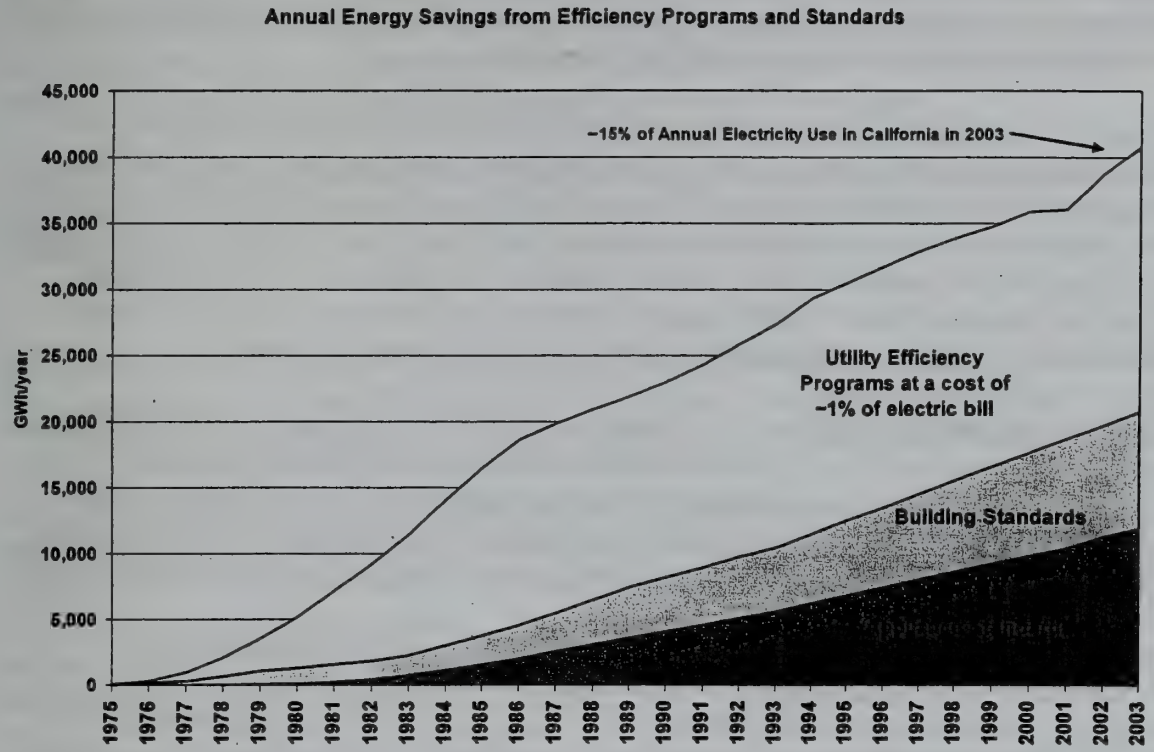
14. *Are there any figures that show the actual energy savings that are achieved by the energy efficiency building standards? What steps can be taken to get a better sense of whether the standards are working fully and to ensure local governments enforce those standards?*

The Energy Commission calculates the actual energy savings that are achieved from its energy efficiency standards. Much on the information available on the effectiveness of the building standards is available on the Energy Commission's web page at www.energy.ca.gov The graph displayed on the following page shows the cumulative energy savings that have been achieved since 1975 from the building standards, the appliance standards, and utility energy efficiency programs. The two standards programs have been an extremely cost-effective means for the state to reduce its energy demand, with the current cost of the combined program approximates $4 to $6 million per year in staff and contractor costs. By contrast, the other half of the savings on this chart have been achieved by utility programs, which are currently operated at a cost of over $700 million per year.

The Energy Commission is currently working with the CPUC to improve our measurement and evaluation of the effectiveness of all of the energy efficiency programs. The most recent thorough review of those savings was completed more than 10 years ago, but the current work will significantly improve our understanding of the present effectiveness of both the standards programs and the utility programs. Much of

the information on the effectiveness of our standards is reported as part of the biennial *Integrated Energy Policy report*, so new estimates will be available this fall.

I fully support efforts by the Commission to improve the measurement and evaluation of our state's energy efficiency and demand response activities.



Enforcement of all aspects of the building codes, including the energy efficiency standards contained in Title 24, is the responsibility of local building officials. The Energy Commission provides training and assistance both to those officials and to the contractors who must follow the standards. This training and assistance is a key element of the overall program, and includes manuals, compliance forms and calculators, newsletters, and videos which are available on the web.

The Energy Commission works actively with the Contractors State License Board (CSLB) to help ensure that contractors comply with the Title 24 requirements through their oversight of contractors. In addition, the Energy Commission works with building departments to help them understand their role and obligations in enforcing the efficiency standards as part of the overall California Building Code (Title 24).

15. *The commission has performed important research and assessment work showing the vast amount of energy used to treat, convey, or dispose of water in the state. The State Water Project alone consumes huge amounts of energy to pump water from the north to the south. Energy efficiency in water use often shows a co-benefit in increasing water supply. What steps is the commission taking to increase energy efficiency in water use? Should it accelerate its efforts and focus more specifically on water efficiency?*

In preparation of the *2005 IEPR*, we made a concerted effort to address the water-energy interface and to quantify the substantial linkage between energy consumption and water use in California. Roughly 20 percent of the state's electricity consumption and one-third of the non-power plant natural gas consumption are used to collect, move, and treat water in the state. Urban water use accounts for about three quarters of the water-related electricity and natural gas consumption.

The Energy Commission has consistently used its authority for energy efficiency to establish energy efficiency standards for buildings and appliances to establish water efficiency standards. In the past, the Energy Commission has established standards for low-flow shower heads and toilets and commercial spray rinse valves. A recent update to the appliance standards included water efficiency standards for clothes washing machines, as directed by AB 1561 (Kelley, Chapter 421, Statues of 2002). These standards provide a strong mechanism for saving both water and energy.

Yes, the Energy Commission should accelerate its efforts to focus on water efficiency, as part of its ongoing updates to the building and appliance efficiency standards. For example, standards could be developed to reduce water use through more efficient irrigation systems and practices, such as drip irrigation of certain crops and moisture detection and control of irrigation systems that help reduce both water and energy use.

The Energy Commission has also been actively working with water and energy associations and agencies to encourage energy conservation through water conservation, and local water desalination and reuse. The Energy Commission provides technical assistance and financing to local water and wastewater agencies aimed at improving the energy efficiency of treatment and conveyance systems. Under the Warren-Alquist Act, the Commission is responsible for adoption and enforcement of state energy efficiency building standards and appliance standards.

Lastly, under existing law, the Energy Commission is responsible for adoption and enforcement of state building and appliance efficiency standards. Water efficiency standards and their associated energy savings would decrease the energy intensity of the water sector, improve electricity system reliability, and reduce the need for both energy and water resources.

Implementation of Greenhouse Gas Performance Standard

Last year the Legislature and Governor enacted SB 1368 (Perata, Chapter 598, Statutes of 2006). Among other things, that law requires the Commission to oversee the implementation of the greenhouse gas emission performance standard for publicly owned (municipal) utilities. The Energy Commission adopted regulations in May to implement the law.

16. *In early workshops held by the commission, commissioners and staff expressed concerns regarding the resources needed to enforce the law. Do you believe the commission needs additional staff to implement the law?*

In June 2006, the Energy Commission adopted an emissions performance standard for power purchased by municipal utilities, as required by Senate Bill 1368. This standard, which applies to contracts for new baseload generation, expresses a clear preference for low-carbon sources of electricity, by setting a standard at a rate of emissions no higher than emissions from a natural gas combined cycle plant.

If the Commission receives the additional resources (two staff positions, including one attorney) that we requested in the current state budget, we will have adequate resources to enforce the provisions of SB 1368.

17. *Has the commission examined the power purchases of state government agencies, such as the Department of Water Resources, to ensure that they are abiding by the same standards imposed on both public and private utilities?*

The Department of Water Resources (DWR) operates the State Water Project (SWP), which consumes large amounts of electricity as it delivers water to homes, businesses, and farms. Our initial assessment shows that operation of the SWP contributes 0.6% to California's total GHG emissions. This amount may seem small when compared to the largest source of GHG emissions in California. By contrast, the transportation sector accounts for over 40 percent of the state's total GHG emissions.

The DWR is completing an assessment of its GHG profile through its membership in California the Climate Action Registry. Moving forward, I will continue to advocate improved efficiency and use of cleaner renewable sources by DWR and other state agencies. Replacing the Reid Gardner power plant with cleaner sources could significantly reduce its GHG emissions in advance of the deadlines outlined by the Governor and the Legislature.

I believe that DWR should exhibit leadership by improving the efficiency and reducing GHG emissions from the operation of the SWP. Through our participation in the Climate Action Team, we are advocating aggressive action by DWR and other state agencies in improving the efficiency of their operations, as part of the state's response to climate change. State agencies should lead by example by adopted more progressive and stricter standards for operating state facilities, and in procuring new electricity resource additions that meet the requirements of SB 1368.

Goals

1. **Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as deputy secretary for employment and workforce development?**

Answer:
I have three primary over-arching goals I would like to accomplish during my tenure as Deputy Secretary. They are:

- Make more efficient use of the WIA funds we receive and administer.
- Increase the amount of workforce development funds through grants and public/private partnerships.
- Maximize the economic impact of the WIA programs.

Make more efficient use of the WIA funds we receive and administer.
With an overall 40% cut in the amount of federal funds available for job training activities in the state, we need to find new and better ways of fulfilling our mission. Already, the Labor and Workforce Development Agency has set three priorities for the investment of 15% Governor's discretionary funds:

- High wage /high growth jobs
- Removing barriers for workers, particularly for those at the bottom of the career ladder
- Areas of statewide need (such as nursing, construction, logistics)

Additionally, the Governor's discretionary funds are now distributed on a competitive basis through solicitations for proposals that allow us to get the maximum benefit from our investments, as well as allowing a fair way to provide access to these funds.

Now, we are working with local area directors to see if there are new and better ways to conduct our day-to-day business in the one stops by integrating services that will improve the one-stop experience for our customers and at the same time help us perform more efficiently.

Increase the amount of workforce development funds through grants and public private partnerships.
We are also taking some new approaches to increase the amount of money we have available to spend on workforce development activities. We are partnering in new ways with the private sector to secure matching training dollars (see question 4b), while at the same time pursuing grants from foundations and the U.S. Department of Labor. For example, in the past 18 months alone California has been awarded $20 million in highly competitive grants under the Workforce Innovation in Regional Economic Development (WIRED) initiative as well as helped other organizations successfully compete for other community based job training grants.

Maximize the economic impact of the WIA programs.
Finally, my third goal is simply to find ways to maximize the economic impact of WIA programs. If used wisely, WIA program dollars can help our existing businesses expand, attract new businesses and attract direct foreign investment to California to help drive and sustain the economy. As businesses look for locations to place their operations or to expand their operations

and as foreign governments look to invest in America one of the primary issues they consider is the availability of the workforce. One of the many issues we need to be considering as we look forward is determining if there are occupational or industry specific training investments we should be making now to ensure California is well positioned to attract new and higher paying jobs to our state or to better position our existing employers in their efforts to expand.

This is obviously a help to the employers, but it has an equally positive impact on the individuals who benefit from stable employment in high wage jobs in growing industries and who, in turn, pay taxes into our state treasury. This started with the concept of prioritizing funding, not only on the high wage, high skill jobs, but also removing barriers for those at the bottom of the career ladder. It is much more efficient to help these workers become financially secure than to deal with the economic and social impacts of unemployment.

Budget/Staffing

2. In the next few years it is anticipated that a number of experienced personnel in the state will reach retirement age.

How will this affect the programs under the agency's jurisdiction? What steps are you taking to minimize the impact on program operations? How do you propose to attract and train replacement staff?

Answer:

2a. How will this affect the programs under the agency's jurisdiction?

The vast majority of LWDA employees work at the Employment Development Department (EDD). EDD has a workforce of approximately 8000, of which 30% is 55 years of age or older. Based on EDD's analysis, over 1000 employees (approximately13% of the current workforce) are likely to retire in the immediate future. If we don't do a good job of succession planning, programs will face a loss of leaders, loss of staff in mission critical areas, and loss of institutionalized program knowledge.

2b. What steps are you taking to minimize the impact on the program operations?

EDD developed and implemented a succession plan in 2005 to help prevent the critical loss of knowledge that could otherwise occur. The plan is designed to ensure the Department is positioned to have a continuum of highly skilled employees to implement, manage, and operate the Department's various programs and systems. The plan identifies objectives and an action plan for us to follow to assist EDD in retaining staff and preparing them to become our future leaders at EDD. This plan includes both short-term and long-term strategies that address recruitment, training and retention of talented staff. One result from the plan is that we now provide attrition and aging information to the Department's program managers on a monthly basis to assist them in evaluating and planning for their workforce needs. With this information, the program managers are better equipped to focus on critical hiring needs.

2c. How do you propose to attract and train replacement staff?

We are undertaking a variety of efforts identified in the succession plan to continue to meet the hiring needs at EDD, including:

- Hiring a Recruitment Coordinator to more aggressively address the Department's critical hiring needs. The Recruitment Coordinator has established a presence on college campuses, and has established contacts in many state-wide community-based organizations. These contacts have helped market EDD as an attractive employer, resulting in hundreds of talented applicants for open exams.
- Partnering with other state agencies to recruit for and administer open exams.
- Establishing on-line exams that are accessible to applicants at any time.
- Utilizing the revised Staff Services Analyst classification to recruit recent college graduates into State Service.

The Department's training program also includes New Employee Orientation training, and program and job specific training for all new employees. The Department also offers various in-service and out-service training classes for job related and upward mobility purposes.

The administration has proposed a $27.1 million cut to the Employment Development Department's job services program. This cut would remove all state funding from the program and eliminate 270 positions.

3. What impact would this have on the job service program and on the department's participation in local one-stop centers?

Answer:

While funding cuts will reduce the number of Job Service staff and potentially reduce the number of locations available, the remaining Job Service staff will continue to provide core services in at least one California One-Stop Career Center in each Local Workforce Investment Area as they now do which is what is required by the law. In addition, services will be available via CalJOBS, EDD's Internet job search website.

Workforce Development

The federal Workforce Investment Act of 1998 made significant reforms to the state's workforce development system that focused on increasing private sector involvement and improving the alignment of public education and training programs. Since the inception of the federal act in 1998, California has received a 34 percent decrease in funding.

4. What impact has the reduction in federal funding had on California's workforce investment system? What changes in policy or operations can help to mitigate the impact of these reductions on job seekers and employers?

Answer:

4a. What impact has the reduction in federal funding had on California's workforce investment system?

With the implementation of the Workforce Investment Act (WIA) in Program Year 2000-01, California received about $630 million to fund a workforce system that delivers universal access to job seekers and provides specialized services to target populations, such as welfare recipients, the disabled community, long-term unemployed workers, and people with language barriers. Since then, California has experienced a steady decrease in WIA funding that has forced local program operators to curtail services provided in some areas, while finding ways to use the remaining funds more efficiently. In Program Year 2007-08, California received about $378 million of WIA funding (a 40 percent reduction since the beginning of the program), which includes an almost 55 percent reduction in the Dislocated Worker funding stream.

As there is a growing need for a skilled workforce in almost every industry cluster, there are rapidly diminishing resources to upgrade the skills of workers to meet that need.

4b. What changes in policy or operations can help to mitigate the impact of these reductions on job seekers and employers?

California must embrace a variety of strategies to help mitigate the negative effects of the funding reductions. California must:

- Foster collaborative relationships
- Explore making changes to service design
- Pursue changes to the federal DW funding formula
- Streamline operations to reduce infrastructure costs.

Foster collaborative relationships: By fostering collaborative relationships with public, private and non-profit entities, we have been able to develop regional training and employment projects, take advantage of matching funds from multiple organizations, and showcase a model of collaboration that Congress can consider as it deliberates on funding levels for workforce programs. As an example, in June 2005, the Governor launched his Nurse Education Initiative, a public-private project to expand educational capacity in Community College nursing programs. This five-year $90 million project provides funding to community colleges to:

- Provide more clinical education opportunities
- Reduce student attrition rates
- Recruit additional nursing instructors

The cost of this project is shared three ways between the Governor's WIA discretionary dollars, Community Colleges, and industry (hospitals) or foundations. Forming such a partnership created a greater impact and more sustainability. Funds were released through a competitive grant process, whereby all California Community Colleges were eligible for funding support. Nearly 40 colleges applied for the grants and a total of 19 colleges were awarded funding support. This program puts in place long-tern sustainable projects as well as makes existing programs more effective by reducing the attrition rate. It was one of many collaborative programs started under the Governor's Nursing Education Initiative.

These projects are already showing results. The BRN estimates that these projects are expected to add an additional 10,900 new nurses to the workforce by 2010. This represents a reduction in the shortage by 25 percent.

Explore making changes to service design: In addition to expanding partnerships, we must also work to integrate programs in ways that result in improved delivery of services to job seekers and business, while reducing costs. Some examples of service design changes include sharing common customer pools and supporting a common flow of customers. This would allow for co-enrollment of participants in programs and ensure a coordinated system of cost and performance accountability. Local partners would have to agree on service strategies that provide consistent service approaches for all customers, such as assessing and enhancing skills for all users of the one-stop center, and sharing staff responsibilities for all functions of the one-stop center regardless of how staff is funded.

Pursue changes to the federal DW funding formula: The Federal Dislocated Worker funding formula is volatile and ineffective in getting the money to the population it is meant to serve and should be changed at the federal level. The Federal Dislocated Worker funding formula sends money to states based on: unemployment, long term unemployment and excess unemployment – factors the Government Accounting Office says do not ensure the money gets to the people it is designed to serve – those who have been laid off. The GAO says all states would benefit from a formula that sends money to states based upon the number of insured unemployed, those affected by mass layoffs and permanent job losers.

If the federal funding formula can't be completely redone, at the very least it would be helpful to put a hold-harmless provision within the formula. California has experienced volatile year-to-year changes and a 55 percent reduction in dislocated worker funding since the beginning of the WIA program. Unlike the adult funding formula, the federal funding formula for dislocated workers does not contain "hold-harmless" protections for states which ensure that a State's share of the available funds does not drop more than a specified amount from one year to the next. Adding a hold-harmless provision to the formula would help stabilize fluctuations in the dislocated worker funding, and permit California to be more effective in its long-term planning for serving dislocated workers. California recognized limitations in its own funding formula for local areas and worked with the State Workforce Investment Board last year to change the formulas and provide funding more equitably than in prior years.

Streamline operations to reduce infrastructure costs: California continues to seek reductions in its fixed overhead costs by reviewing the need for facilities and eliminating unnecessary rent expenses. This on-going analysis is done in coordination with local partners to develop the most effective and cost efficient plans for serving customers, while reducing costs. Plans often result in sharing operational costs with partners, integrating programs, and improving access to services while reducing costs through the use of new technology.

5. **In recent years there has been criticism of local workforce investment boards for not allocating enough of their federal funds to job training and, instead using these funds to support the operation of one-stop career centers. Is this a problem? If so, what role should the administration and the Legislature take to remedy it?**

Answer:

5a. In recent years there has been criticism of local workforce investment boards for not allocating enough of their federal funds to job training and, instead using these funds to support the operation of one-stop career centers. Is this a problem?

This is a very complex issue for several reasons, including whether or not prioritizing training over access to services violates the requirements of the law. Each local area struggles to strike the right balance between providing services to jobseekers who need information and basic services to get back in the job market, providing short term skill upgrades and providing training as defined by the Workforce Investment Act.

- Local circumstances, including the needs of the community and the priorities established for client populations, along with local goals for achieving performance outcomes, drive service and spending decisions. Training is not necessary for every job seeker entering the one-stop center. In many cases, customers have sufficient skills and only need self-service access to information —such as occupational wages, industry and occupational growth trends, information about careers, and local area profiles. Local boards likely would show diminished performance, e.g., fewer new entries into employment and lower levels of wages earned, if they increased focus on training, and reduced focus on other employment assistance services.

- Additionally, certain types of training activities, such as paid work experience, internships, and some general computer skills training, are not captured under the federal definition of training and, therefore, are not included as training costs, skewing the interpretation of WIA training expenditures. Likewise, "Administrative Costs" are characterized differently from local area to local area.

- WIA was designed to create a network of one-stops providing universal access to a set of core services available to everyone. Eligible job seekers could also get access to training assistance beyond those core services. Unfortunately, along the way, Congress has cut budgets by 40 percent. So a greater percentage of the costs of the WIA programs are eaten up by the increasing demand for core services at the local one-stop, leaving less for training.

- Lastly, no one really knows how much money is being spent on training. As WIA funds have shrunk, local areas have become smarter about using other resources (such as ETP and Community College incumbent worker training dollars) for training and reserving WIA funds for core and intensive services delivered through the one-stops. Because these funds do not require reporting on WIA measures, they are not considered when the U.S. Department of Labor talks about the level of training activity. So while less WIA defined

training is taking place, significantly more training (as broadly defined) is happening using various other funding sources.

I think it is important that WIA reauthorization also include a congressional review of just how federal funds are prioritized under WIA in light of our rapidly changing economy. What was appropriate in 1998 is not the same economically as 2007.

5b. If so, what role should the administration and the Legislature take to remedy it?

The California Workforce Investment Board has worked with the California Workforce Association and its members to conduct a very thorough evaluation of costs at the one-stop to get a better grasp on how all WIA funds are spent. Once this study is completed, we hope to have a better baseline of information from which to determine what, if any, action may be needed at the state level.

In the meantime, the State can, and should continue efforts that sustain or increase WIA funding levels nationally and for California, and seek greater flexibility in how we use the funding. Local boards need more latitude, for example, in placing job seekers into training without requiring that those individuals first receive core and intensive services. Local boards need more flexibility to transfer funds between their dislocated worker and adult funding streams in order to better meet the unique needs of the unemployed in their local area. California has already pursued some of these remedies, such as requesting (and receiving approval of) waivers of WIA law, allowing Local boards to transfer larger percentages of their funds between the dislocated worker and adult streams than would otherwise be allowed.

The State can also play an important leadership role in bringing other public partners and the private sector together to increase non-WIA funding available for training. For example, the Governor's Nurse Education Initiative, which leveraged $30 million in WIA funding into a $90 million nurse training program. Likewise, the state must make sure training resources such as ETP are preserved for their intended purposes and not diverted for other causes.

6. Are there new approaches you would recommend the Labor and Workforce Development Agency take to ensure a skilled workforce in California?

Answer:

Data clearly indicate there are industries faced with gaps and shortages due to job growth and worker retirements. For example, research done by the Labor and Workforce Development Agency, shows that between now and 2014 we are going to need 73,100 carpenters (41,300 new jobs and 31,800 replacement workers), 11,100 machinists (3,100 new jobs and 8,000 replacement workers), and 109,100 registered nurses (60,900 new jobs and 48,200 replacement workers). Industries are also facing skill shortages because of changing technology.

Although the skills desired by industry are often a mismatch with the skills of available workers, there are some relatively new approaches that are proving effective in bridging this gap – approaches we want to maximize here in California. The first step is to get people focused on

those jobs that can be quantified to have a significant number of high paying jobs eight to ten years from now. We don not want to educate or train people for jobs that are disappearing.

The next approach that we are taking is called "sector strategies" within the workforce development profession. Basically that means working with industry and trainers and educators to create a pipeline of skilled workers for specific occupations.

In its simplest form, "sector strategies" means partnering with industry, education and training providers and the workforce system to accomplish these steps:

- Identify skill sets needed for current and future industry jobs.
- Identify career ladders within the industry.
- Identify existing curriculum or develop new curriculum to upgrade the skills of workers.
- Maximizing all funding sources to create training and education programs.
- Pilot the training and education programs in specific geographic areas with the greatest need
- Expand the programs to the other regional economies with similar industry needs.

We know that to do industry sector initiatives well that effectively serve industries and jobseekers, we need a direct line of communication with our emerging and high growth industries, especially as we see the redefining of a skilled and changing workforce. One of our many efforts includes hiring an LWDA industry liaison to do ongoing outreach with industries and their associations. The business relationships fostered and intermediary nature of this person's role provides a direct link and network to help identify and address concerns and needs.

By working with industry and education we feel positive about the many efforts to date to secure a talented workforce for the future. Let me give you just one example; which involves the biotechnology industry sector

Since 2001, the San Francisco Bay area had over 5,000 workers displaced from the airline and travel industries. Our workforce system was presented with what appeared to be a crisis but in turn offered an opportunity. Because at this same time the biotechnology industry was expressing the need for workers who could support manufacturing processes in a controlled, regulated environment.

The public sector responded with a unique solution to this challenge. Using WIA funding LWDA funded the first biotech training pilot class and the development of a regional model. Transforming the skills of these displaced workers was accomplished through a public-private partnership with the San Mateo County WIB, Skyline and Ohlone Community Colleges, San Mateo Central Labor Council and Genentech. These workers received three months of intensive training for entry-level bio manufacturing positions at Genentech. The first training class resulted in a 95 percent placement rate in biotech positions.

Out of this original partnership a Consortium was created to bring together additional partners and industry input. Additional public/private funding was secured and the project has been the catalyst to a regional framework and increased employer involvement in building workforce

capacity. These efforts allowed the local workforce investment boards to use a strategic approach in matching critical economic need.

This pilot has been recognized nationally by the U.S. Department of Labor and has provided a foundation and curriculum to address what is seen as a lack of basic skills needed for this emerging industry. Beyond this industry these foundational skills offer the opportunities for multiple career pathways in high wage high growth occupations.

We are in various phases of repeating this model in other industries and sectors areas such as energy (both clean technology and refinery workers) and nanotechnology and look forward to additional success stories. Unfortunately, these efforts are expensive and time consuming and are challenging to implement with our badly depleted federal dollars. However, because they are effective and allow for sustainability because of industry partnerships, we will continue to look for ways to expand them.

7. **What actions have you taken to improve the coordination of workforce development services among state and local entities, both within and outside of the agency's jurisdiction?**

Answer:

Great strides have been made in improving the coordination of the workforce development system beyond the confines of the Workforce Investment Act. The Industry Sector Strategies listed in question 6, implementing the WIRED grants in California and changes made in the work of the California Workforce Investment Board, including implementation of SB 293 are just a few examples.

Implementing WIRED Grants
The Labor and Workforce Development Agency successfully competed nationally for the highly competitive U.S. Department of Labor Workforce Innovation in Regional Economic Development Initiative (WIRED) grants and received two awards totaling $20 million. The WIRED initiative goes beyond traditional strategies for worker preparation by funding projects that bring together state, local and federal entities; academic institutions (including K-12, community colleges and universities); investment groups; foundations; and business and industry to address the challenges associated with building a globally competitive and prepared workforce. The first award led by the California Space Authority serves 13 counties in what is called the "California Innovation Corridor" and targets industries in Advance Aerospace, Advance Research & Development and Advance Manufacturing Supply Chain. This innovative approach reaches out to 60 industry, workforce, education and economic development partners to accomplish three main goals:

- Creating new companies and high-skill, high wage jobs by designing a replicable and sustainable innovation support architecture to increase innovation and entrepreneurship.

- Improving the international competitiveness of the region's supply chain by developing and executing a "Smart Supplier Strategy" that supports manufacturers, small businesses and entrepreneurs in adapting to the global manufacturing transformation.

- Accelerating development of a highly skilled 21st Century talent pool by creating pilot projects and activities capable of supporting a continuum of math, science and engineering education (K-U) and lifelong learning relevant to the 21st Century worker.

The second WIRED grant was awarded to the Northern Rural Training & Employment Consortium (NoRTEC) which will cover 16 rural counties in Northern California. The traditional industries, predominantly timber, followed by agriculture, cattle, and fishing, have significantly declined. In order to address these challenges and create high level sustainable employment opportunities, this grant has identified four targets of opportunity (industry clusters); Information Technology, Agribuisness/Agritech, Advanced Manufacturing and Small Business/ Entrepreneurs. These four "clusters" appear the most promising for business growth and development, leading to the ultimate goal of enhanced employment opportunities. The approach is strategic and will identify occupational skill sets, creative curriculum and entrepreneurial activities that meet the projects goal of creating a Public/Private Partnership that is sustainable and meeting the changing needs and demands of this region.

This project too is much broader than just traditional workforce investment funded programs and includes multiple Workforce Investment Areas/One Stops, Small Business Development Centers, Economic Development Organizations, Sixteen County Governments, California State Universities, Community Colleges, Local High Schools, Industry, Banks and Venture Capital Angel Investors.

California Workforce Investment Board
The California Workforce Investment Board (State Board) has realized many accomplishments during the past three years aimed at improving coordination of workforce services. Some of these accomplishments include:

- Successfully increasing the business membership on the State Board and Local Boards in order to meet required private sector majority membership. Business leadership on the State Board is not only a legal requirement, it is critical to achieving a demand-driven workforce system. Our business leaders provide us with the perspective necessary to ensure that our strategic framework for workforce investment in California better served jobseekers by understanding the current and future skill needs of employers.

- An increase and strengthening of public sector involvement in the workforce system by including education, economic development, labor and social service partners on the Board. The organizations these members represent are pivotal to the mission of the workforce system. Without effective working relationships across systems we cannot meet the needs of a diverse population and business base. Effectively partnering the ingenuity of the private sector with the resources of public sector is resulting in an emerging workforce system which will continuously prepare our citizens to meet the demands of our economy and provide for sustenance of the high quality of life for which California is known.

- The State Board has organized its work through a committee structure consisting of one standing committee, 4 special committees and a variety of ad hoc committees. Each of these

committees is chaired by a member of the State Board. In an effort to make certain that the local voice is represented in the work the Board is doing, local workforce investment board staff or members are included on each committee and work group. Using this model, State and local partners have successfully worked together to:

- Develop strong, business-led Local Boards (as required by the law) that interact with and develop talent for their economies both locally and regionally;
- Target workforce resources to produce the most positive economic impact by encouraging local and regional partnerships between workforce, education, and economic development programs, and by tracking the outcomes of those efforts to insure the investments are well made;
- Evaluate the structures needed to facilitate delivery of services that will support a constant supply of workers who can easily make career transitions as the State's economy evolves.
- Identifying administrative efficiencies and governmental cost savings which will maximize investment of available funds in training services in areas that currently have the most economic impact.

Working with the Economic Strategies Panel and the Community College Chancellor's office, the Board is providing training in use of economic and labor market information for strategic decision-making at the local and regional partnership level, which will improve the ability of local boards and education institutions to respond to business needs.

Finally, the Board is leading the State's efforts under SB 293. Senate Bill (SB) 293, signed by the Governor in September, 2006, adds the Workforce Training Act to the California Unemployment Insurance Code with provisions that generally implement the Workforce Investment Act (WIA) of 1998. A majority of the provisions in SB 293 are taken from the federal WIA, while others require new interpretations and guidance to Local Workforce Investment Boards, as well as minor adjustments in the way that the state and Local Workforce Investment Boards conduct business.

The legislation's major requirement is for the California Workforce Investment Board, in collaboration with other state and local partners, create a strategic workforce plan for the State. The State Plan is described in SB 293 as a strategic plan for the entire workforce system, and is intended to serve as a framework for the Strategic Two-Year Plan for the WIA. It will also serve as a framework for the development of workforce policy and fiscal investment, and for the operation of California's labor exchange, workforce education, and training programs.

Unemployment Insurance Trust Fund Solvency

The California Unemployment Insurance Trust Fund has been on the highest employer contribution schedule – the "F" schedule, along with a 15 percent surcharge – since 2004. A 15 percent surcharge is required by statute when the trust balance falls below specified levels.

Even at the highest employer contribution rate possible, the Employment Development Department's October 2006 fund forecast states that the Unemployment Insurance Fund balance of $2.4 billion may not be sufficient if an economic downturn occurs.

8. How would you describe the solvency status of California's Unemployment Insurance Trust Fund? What are the key elements of a sound financing system for the unemployment insurance program?

Answer:

8a. How would you describe the solvency status of California's Unemployment Insurance Trust Fund?

According to the most recent Unemployment Insurance (UI) Trust Fund Forecast published by the Employment Development Department (EDD), California's projected year-end fund balance for 2007 is $2.9 billion. While this may appear to be a substantial balance, it may not be sufficient in the event of an economic downturn.

In the last economic downturn, the EDD paid more than $6 billion annually in UI benefits. Since then, the maximum weekly benefit amount has increased from $330 in 2002 to the current amount of $450.

Depending on the severity of an economic downturn, the combination of increased benefit payments and decreased employer contributions may result in California's UI Trust Fund becoming insolvent.

An adequate reserve is based, in part, on designing a revenue structure that enables sufficient funds to be collected to respond timely to varying economic conditions. The U.S. Department of Labor recommends a solvency standard based on the Average High Cost Multiple (AHCM). The AHCM determines how many years of benefits the UI Trust Fund could pay, at the state's highest benefit level, without the addition of revenue. The recommended AHCM level is 1.0 or one year.

States vary in their AHCMs. The highest State AHCM in 2006 was New Mexico with 2.03. The lowest was Michigan with .03. The national average was .50. California currently has an AHCM of .27 which puts it below average, but still higher than many states including North Carolina (.12), New York (.07), Kentucky (.26), New Jersey (.23), and Illinois and in line with several other states including Minnesota (.29), Pennsylvania (.28) and South Dakota (.28).

8b. What are the key elements of a sound financing system for the unemployment insurance program?

Establishing a sound financing system for the UI program is dependent upon several principles, including maintaining an adequate reserve to pay UI benefits.

There are four basic components of the UI system in California, which are all interrelated. They consist of the following:

- **Taxable Wage Ceiling:** Employers pay a state tax on wages earned by each worker within a calendar year up to a specified amount. This amount is known as the Taxable Wage Ceiling or Taxable Wage Base, and these taxes fund benefit payments to unemployed workers. Federal law requires a minimum taxable wage ceiling of $7,000, which is the current California taxable wage ceiling.
- **Maximum Tax Rates:** In California, the current maximum tax rate is 5.4 percent, plus a 15 percent solvency surcharge, for a total maximum rate of 6.2 percent.
    - The actual tax rate varies for each employer, depending on the employer's overall use of the UI system, as well as the condition of the UI Trust Fund. An employer may earn a lower tax rate when fewer claims are charged to the employer's account by former employees. This is known as the "experience rating" method. Experience rating is meant to act as an incentive for employers to maintain a stable workforce and manage their UI reserve accounts.
    - There are four different experience rating formulas that states use to determine tax rates. In California, the formula used looks at an individual employer's payroll and reserve account balance, which is the cumulative record of credits and charges for that employer. Employers' tax rates are based on one of seven tax schedules established under California law.
- **Eligibility Provisions:** These provisions define when an individual is entitled to benefits.
- **Benefit Provisions:** These provisions define the maximum weekly benefit amount and replacement rate for UI benefit payments.

These are the key factors that need to be considered anytime the UI benefit and tax schedules are taken into account. As you can see, two of these components relate to funding and two to benefits.

Shortly after being appointed by Governor Schwarzenegger, Secretary Victoria Bradshaw brought together a workgroup of employers and labor leaders to begin an educational initiative on the status of the trust fund and the four components listed above so that advocates on both the employer and worker sides would have a better understanding of the unemployment insurance system and structure if taxation and benefit discussions do occur. In addition, we have had discussions with others, such as the Department of Finance, to ensure that there is a broad understanding of the potential impact of the solvency level of the U.I. fund.

9. A number of states index both maximum benefit levels and financing to increases in the state's minimum wage. What is your position on indexing both employer contributions and maximum unemployment benefits?

Answer:

At best, indexing UI financing and benefits is only a partial answer to the challenge of establishing a sound UI financing system. There are additional, critical issues such as eligibility and the taxable wage ceiling that should also be discussed as part of any benefit/financing

discussion to ensure the program is working effectively and efficiently under evolving economic and social conditions that might otherwise go unexamined if indexing is implemented. Indexing is by definition an imperfect solution because it relies on past economic indicators to provide a response to a future undefined and unpredictable problem.

Workers Compensation

*As deputy secretary, you are charged with overseeing and providing direction to the **administrative director of the Division of Workers' Compensation. SB 899 directed the division to revise the permanent disability benefit schedule, based on new criteria spelled out in that bill.** Pursuant regulations adopted in January of 2005 directed the division to study the effects of the new schedule and revise it, if appropriate, by June 30, 2006. The bipartisan Commission on **Health and Safety and Workers' Compensation reports that the new schedule has reduced benefits by approximately 70 percent.***

10. *The Division of Workers' Compensation (DWC) has begun releasing parts of its permanent disability study but has also indicated that more work needs to be done. **When will the division's full study be released?***

Answer:

As Deputy Secretary, Employment and Workforce Development, my involvement with the workers compensation program is to help ensure that injured workers who do not return to their previous employment have access to the full array of job placement and the job training programs to which they are entitled and to career opportunities. Overseeing and supervision of the Administrative Director falls to the Director of the Department of Industrial Relations.

So before I pass along the answers to the workers compensation questions asked, let me mention that we are working to help jobseekers, career counselors and educators, and case managers understand the incredible number of workers we are going to need in high-wage high-growth jobs in the future. As baby boomers retire, there are amazing opportunities on the horizon for people with the right skills and education. We want all jobseekers to know about the availability of this data and have access to it in a way they can understand it and use it to make informed career decisions.

To answer questions 10 through 13, I have consulted with Carrie Nevins, Acting Administrative Director to the Division of Workers Compensation who has provided the following information:

Section 9805.1 of the California Code of Regulations provides that the Administrative Director will collect data for 18 months, beginning January 1, 2005; evaluate the data; and revise the future earning capacity (FEC) adjustment, if necessary. The regulations further provide that if the Administrative Director determines that there is not sufficient data to perform a statistically valid evaluation, the Administrative Director shall continue to collect data until a valid statistical sample is obtained. Section 9805.1 does not specify a specific date of June 30, 2006, for revision of the FEC. The regulations state that if there is a statistically valid sample of data that the Administrative Director determines supports a revision to the FEC, the Administrative Director

shall revise the PDRS before the mandatory five year statutory revision contained in Labor Code section 4660(c). The mandatory five year period in Labor Code section 4660(c) ends on January 1, 2010.

CHSWC's report of February 23, 2007, found that average permanent disability ratings had been decreased by about 41 percent under the 2005 PDRS, while the actual dollar amount of permanent disability benefits paid to injured workers had been reduced by about 52 percent. The greater disparity in the dollars is due to changes in the number of weeks paid for each percentage of permanent disability, as compared to 2004. SB 899 reduced the number of weeks payable to the levels that had existed for at least a decade prior to 2004. The year 2004 received an increase in weeks as a result of AB 749 in 2002, but this increase was repealed by SB 899, except for ratings of 70 and over.

DWC released its full study permanent disability study in three parts. On January 31, 2007, DWC released information on improved return-to-work outcomes since the reforms. On March 23, 2007, DWC released a wage loss study that replicated the wage loss study methodology used by RAND previously to study wage loss during the early 1990s. On May 29, 2007, DWC released the final portion of the study – uncompensated wage loss for workers injured in 2003 and a comparison of ratings under the old and new schedules.

Although DWC continues to develop new data and information, DWC has publicly announced that they have sufficient information with which to make changes to the rating schedule. An advisory committee consisting of representatives of labor, applicant attorneys, defense attorneys, employers, and injured workers convened in Sacramento on August 8, 2007. The committee discussed the age adjustment mechanism in the schedule, reviewed methods for ranking the parts of the body, and directed DWC on some additional research. There were about 30 people in attendance.

In an ideal world, DWC would like to have three years of data for workers injured in 2005 in order to fully evaluate the effects of the new schedule. However, this information will not be available until mid-2009. DWC committed to review the schedule with 18 months of data, beginning on January 1, 2005, and is doing that.

11 The division's initial comparison between the pre-and post-SB 899 permanent disability schedules is largely consistent with that of the Commission on Health and Safety in Workers' Compensation (CHSWC). Is the division currently considering revising the permanent disability schedule? If yes, what is its timeframe for doing so?

DWC has committed to making changes to the schedule based on 18 months of data that has now been collected and analyzed. DWC is working with an advisory committee consisting of system stakeholders and participants to review and consider changes. DWC's committee will be evaluating the future earning capacity (FEC) adjustment, the ranking of parts of the body within the FEC categories, and the proper application of the age adjustment. DWC plans to promulgate regulations that will revise the schedule as of January 1, 2008.

SB 228 adopts interim treatment guidelines for injured workers and directs the division to consult with CHSWC to adopt permanent guidelines by 2004. The division ignored all of the recommendations from the commission and instead codified the interim guidelines. However, it also establishes a provider "best practices" panel charged with reviewing the treatment guidelines on an ongoing basis.

Pursuant to Labor Code section 77.5, CHSWC and the Division of Workers' Compensation contracted with the RAND Institute for Civil Justice and RAND Health (hereinafter RAND) to conduct a study of medical treatment utilization guidelines. The "Working Paper" for the study was issued by RAND in November 2004. The "Working Paper" was later published in a report entitled: "*Evaluating Medical Treatment Guideline Sets for Injured Workers in California,*" (RAND, 2005).

Based on the RAND 2005 report, CHSWC recommended, in pertinent part, that the Administrative Director:

- Consider adopting an interim utilization schedule based on the ACOEM Guidelines;
- Consider replacing the ACOEM Guidelines with respect to spinal surgery by the American Academy of Orthopedic Surgery (AAOS) guidelines; and
- Consider adopting interim guidelines for specified therapies, including podiatry, chiropractic, physical therapy, occupational therapy, occupational therapy, acupuncture, and biofeedback.

The Administrator Director followed CHSWC's recommendation to adopt the ACOEM Practice Guidelines as the medical treatment utilization schedule and adopted in part CHSWC's recommendation to adopt interim guidelines for specified therapies by adopting acupuncture guidelines. The Administrative Director decided not to replace the ACOEM Practice Guidelines with respect to spinal surgery by AAOS. Subsequently, in its April 6, 2006, Updated and Revised CHSWC Recommendations to DWC on Workers' Compensation Medical Treatment Guidelines, CHSWC withdrew its recommendation that the ACOEM Practice Guidelines be replaced with respect to spinal surgery by AAOS. It was later determined that the AAOS Guidelines were no longer available on the internet.

12. Please provide us with a list of the membership of the division's treatment guidelines panel.

The final medical treatment guideline regulations were filed with the Secretary of State on June 15, 2007 and immediately became effective. Months prior to the effective date, on October 5, 2006, DWC issued a newsline seeking nominations for its medical evidence evaluation advisory committee. The workers' compensation community responded overwhelmingly, with over 100 nominations. On March 2, 2007, DWC announced the appointment of the members of the medical treatment guideline evaluation committee, as shown in the table below.

Name	Specialty
Melvin Belsky, M.D.	Physical Medicine and Rehabilitation
Mary Foto, O.T.R.	Occupational Therapy
Gary Globe, D.C., M.B.A., Ph.D.	Chiropractic

Scott Haldeman, M.D., D.C., Ph.D.	Neurology
Franklin Kase, D.P.M.	Podiatry
Joshua Kirz, Ph.D.	Psychology
Ronald Koretz, M.D.	Internal Medicine
Sean Mackey, M.D., Ph.D.	Pain Management
Peter Mandell, M.D.	Orthopedics
Sam Miles, M.D., Ph.D.	Psychiatry
Praveen V. Mummaneni, M.D.	Neurosurgery
Bernyce Peplowski, D.O., M.S.	Occupational and Environmental Medicine
Joshua Prager, M.D., M.S.	Anesthesiology
Ted Priebe, O.M.D., L.A.C.	Acupuncture
Marcia Sablan, M.D.	Family Medicine
Leslie Torburn, P.T., M.S.	Physical Therapy

13. ***Since 2004, how many times has the treatment guidelines panel met? Please provide us with a list of its findings and recommendations.***

As stated previously, the treatment guidelines panel was appointed on March 2, 2007, and the full panel met for the first time shortly thereafter on March 19, 2007. The full panel met again on June 6, 2007, and is next scheduled to meet in September.

In addition to full committee meetings, subcommittees were created for Chronic Pain and Post-Surgical Therapy. The Chronic Pain subcommittee met on April 23, May 23, and June 23, 2007. The Post-Surgical Therapy subcommittee met on June 25, 2007.

During its March 19 meeting, the full committee reviewed ACOEM's new elbow chapter and gave a number of recommendations to ACOEM concerning that chapter. ACOEM made changes to the chapter, based on the recommendations, and just published the new chapter. The committee recommended that DWC adopt the new ACOEM elbow chapter, and DWC is working on the regulation to do so.

During its meeting on June 6, the full committee discussed adoption of chronic pain guidelines, recommending the ODG be used as a basis, but with a revised introduction. The Chronic Pain subcommittee was formed, and that group is working independently to write a new introduction that blends existing California law with ACOEM and ODG. The chapter will be presented to the full committee for adoption at its next meeting in September. The full committee also agreed to form a Post-Surgical Therapy subcommittee to bring recommendations for guidelines to the full committee at its next meeting in September.

SENATE RULES COMMITTEE

QUESTIONS AND ANSWERS IN PREPARATION FOR CONFIRMATION HEARING ON AUGUST 29, 2007

1. Please describe your major accomplishments during your tenure on the Public employment Relations Board (PERB).

It is difficult for me to identify any particular personal accomplishment because my work is so intertwined and interdependent with the work of my fellow Board Members. Appeals of dismissals and proposed decisions, for example, are decided by a minimum of three Board Members. Moreover, requests for injunctive relief and regulatory review also require the participation of the Board. Consequently, it should be said that my accomplishments are my colleagues' accomplishments and vice versa.

Since I joined the Board in March 2005, the Board has rendered 167 decisions during Fiscal Years 2005-2006 and 2006-2007. Whether serving as the author or as a panel member, each case warrants and receives the same scrutiny. My Board colleagues and I are making significant progress, working together, in moving cases forward to resolution. I particularly appreciate my colleagues' collegiality, cooperation, and insight during the deliberative process.

It is well known that PERB's primary mission is to promote harmonious relations between labor and management. With this mission in mind, we encourage parties to return to the bargaining table to work out their differences. However, disputes between labor and management are inevitable. In Fiscal Year 2006-2007, PERB received 824 unfair practice charges. We are pleased to report that the rate of settlement at the informal conference phase was 53 percent last year. In my opinion, PERB-assisted settlements are critical in the promotion of harmonious labor relations and are one of the key steps in the adjudicatory services offered by PERB. The Board appreciates and recognizes PERB's excellent staff for this major accomplishment.

PERB's injunctive relief requests and litigation have significantly increased since 2000 when cities, counties, and specials districts under MMBA were added to PERB's jurisdiction. All draft briefs and other pertinent documents have been, and will continue to be, reviewed by the Board in a timely manner. Please be assured that I personally take my responsibilities very seriously and have spent many hours of official and personal time to review such cases. And, I will continue to take whatever measures are necessary to responsibly execute my duties as a PERB Board Member.

Over the past two years, PERB has been extremely busy with its regulatory review responsibilities. There have been two separate rulemakings in which the Board has reviewed and approved the following:

Senate Rules Committee

Attachment 1

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(1) Regulations regarding revisions to various sections of EERA, MMBA, Dills Act, TEERA, Trial Court Act, and Court Interpreter Act. The substantive changes included the repeal of regulations that no longer provide separate processes for filing financial statement complaints, new regulation to provide for on-line filing of unfair practice charges, amendments to conform PERB's treatment of window period filings to pertinent Government Codes, MMBA statute of limitations, unit modification petitions, and application of MMBA representation regulations.

(2) Revisions to agency fee regulations.

Last September, PERB commemorated its 30th anniversary by co-hosting with CPER an educational conference: "PERB: A Step by Step Analysis of the Process." It was such an outstanding success that many stakeholders who were unable to participate in Sacramento due to travel restrictions encouraged the Board to host another conference in southern California. Accordingly, a second conference will be held on September 20, 2007, at the campus of the University of California, Irvine.

Fostering harmonious labor relations, by necessity, entails reaching out to our constituents in order to better address their needs and concerns. Having the opportunity to interact with our labor and management constituents in a relaxed, neutral forum served this purpose well. Therefore, the Board considers this conference to be a major accomplishment.

Along this same line, Chairman Duncan, early in his term, reorganized PERB's Advisory Committee that had languished for many years. The purpose of this Committee (composed of key members of the public sector labor and management communities) is to assist in developing recommendations on how PERB can improve. As a result of suggestions made during Advisory Committee meetings, improvements were made to PERB's website, such as allowing Board decisions and regulations to be accessed and reviewed on-line. Additionally, unfair practice charges can now be filed on-line. PERB has and will continue to consider all recommendations and/or requests.

2. What are your goals for your next term on the board? What do you expect to accomplish? How will you measure your success?

First and foremost, I will continue to render fair and balanced decisions based on existing laws and regulations. Since these decisions impact people's lives and livelihoods, the Board needs to be vigilant in rendering clear and timely decisions. Consequently, my goal is to decide cases within six months from the date they are assigned.

Success can be measured in a variety of ways, e.g., quantity versus quality. Rendering comprehensive decisions within six months of assignment is a very important measure of success. Also, it is very important to me to earn the respect of the labor-management-legal communities for being open- and fair-minded in the deliberative process. Success for me, as a Board Member, is when a dissenting party would ultimately acknowledge that a decision of mine was fair based upon the sound application of California's labor laws and regulations.

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Success for me, as a Board Member, is being recognized as a neutral, having the ability to clinically review a case record without any preconceived notions or inclinations. And, last but not least, success for me, as a person, is the recognition by my colleagues and constituents that I am a hard-working individual who is honest, trustworthy, and forthright. These are important values – personally and professionally – on which I will measure my success.

3. Based upon the types of complaints PERB reviews and adjudicates, what, in your view, are the most important labor relations issues facing employers and employees?

In my opinion, the most important labor relations issue facing public employers and employees is the rising costs of health care. Over the past year, the Board has seen a growing trend in both unfair practice charges and other forms of concerted activity (e.g., work stoppages) in which the core dispute centers on the parties' inability to reach an agreement regarding a fair and equitable division of health care cost increases.

As a result of these disagreements, the Board has been required to rule on numerous injunctive relief requests involving strikes and other tactics that are intended to publicly elevate the seriousness of the issue to decision-makers in both the public and private sectors. Obviously, providing affordable health care is a top priority for both the Governor and the Legislature, and long hours are being devoted to the resolution of this critical problem. In the meantime, PERB must continue to provide a neutral forum to work out these differences and ensure that all parties employ a reasonable approach in negotiating health care benefits and costs for current public employees.

4. PERB is responsible for assisting parties in reaching negotiated agreements through the mediation and fact-finding processes. Parties to negotiations may declare an impasse if they are unable to reach an agreement. At that point, PERB contacts the parties and can determine an impasse exists if further negotiations without the assistance of a mediator appear pointless. Please explain the criteria PERB uses to determine that an impasse exists.

The PERB administers seven different labor relations acts covering over 2,000,000 public employees in the State of California. These acts include the Educational Employment Relations Act (EERA), the State Employer-Employee Relations Act, known as the Ralph C. Dills Act (Dills Act), the Higher Education Employer-Employee Relations Act (HEERA), the Meyers-Milias-Brown Act (MMBA), the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA), the Trial Court Employment Protection and Governance Act (Trial Court Act), and the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act). Of these acts, PERB only makes impasse determinations in cases arising under EERA, HEERA and the Dills Act.

The criteria that PERB uses to determine whether an impasse exists are found in PERB Regulation Nos. 32972 and 32973. A copy of those regulations is attached for your convenience.

In summary, PERB Regulation No. 32972 sets forth the procedural requirements for a party seeking a Board determination that impasse exists. This regulation, among other things, generally requires the requesting party to describe the bargaining unit in question, the nature of the dispute, the history and status of the negotiations, and the bargaining efforts made by the parties. Based on this information, as well as any other relevant information provided by the parties, a Board agent (typically a PERB regional attorney) determines whether the parties can make further bargaining progress on their own without the assistance of the neutral third party.

If it is determined that the parties can make additional progress on their own, impasse will not be declared and the parties will be encouraged to return to the table. (PERB Regulation No. 32973.) If, on the other hand, it is determined that the parties are unable to make additional bargaining progress without assistance, the Board agent will declare impasse and order the parties to mediation. (Ibid.)

It is noteworthy that, under PERB's current regulations, Board agent determinations regarding the existence of an impasse are not directly appealable to the Board. Consequently, this issue is rarely considered by the Board itself and only in connection with an unfair practice charge

5. Please provide details on the increase in workload as a result of PERB's expanded jurisdiction. Have staffing levels and funding kept pace with the increased workload?

The number of cases reviewed each year by the Board has significantly increased since 2000 when cities, counties, and special districts under MMBA were added to PERB's jurisdiction. The number of unfair practice charges (UPCs) has climbed dramatically from 461 in FY 2000-2001 to 824 in FY 2006-2007, averaging 900 UPCs a year.

Further, PERB experienced a steady increase in new litigation cases and injunctive relief (IR) requests when MMBA-related cases began to escalate during FY 2003-2004. Since that time, the number of injunctive relief requests received by the Board has grown, averaging 15 injunctive relief requests each year. Also, litigation projects have increased, averaging 16 litigation projects a year. While some of this increased activity involves defending Board decisions in court, this litigation growth is also partly attributable to an aggressive effort on PERB's part to protect our initial exclusive jurisdiction over the statutes it administers – again, specifically MMBA. It should be noted that only two IR requests were granted by the Board, reflecting the high standard of "extraordinary circumstances" needed to be proven by the affected party when attempting to pursue this course of action.

In light of this significant increase in workload over the past several years, the Board anticipates a continual increase in UPCs. Accordingly, PERB submitted a BCP for FY 2007-2008, seeking to add three positions (two staff counsel and one ALJ II) to address the mounting workload pressures. In so doing, PERB will be better equipped to stabilize the public workforce and foster harmonious relations in the labor community.

6. How does PERB plan to meet the challenges of recruiting, training, and retaining staff in anticipation of impending retirements?

Since PERB is a General Fund agency, our approach to external education and training needs to remain on the conservative side. Budget permitting, the Board will continue to support training opportunities to broaden the knowledge of its staff and, thereby, enhance their careers. Budget constraints, notwithstanding, one of PERB's top priorities is to hire the best qualified staff – whether hiring from within or recruiting experienced external candidates – in order to ensure the best work product, as well as to help train PERB's less-experienced staff. By doing so, PERB continues to provide its staff the necessary resources and training to be able to do their jobs to the best of their abilities.

One of the top priorities for the General Counsel's office – the largest division at PERB – is to provide cross-training for its legal staff in preparation of the inevitable retirements of key senior staff. PERB is very fortunate to have a team of experienced and knowledgeable professionals who are willing to provide insight and guidance. Cross-training areas include

(1) Unfair practice charge investigations;

(2) Representation work, monitoring unit modifications, elections, certifications and decertifications of exclusive representatives, agency fee elections, etc.; and

(3) Litigation work, preparing legal documents and representing PERB in court.

The General Counsel's office has been conducting formal in-house cross-training sessions for staff at PERB's Los Angeles and Oakland regional offices, as well as at the Sacramento headquarters. To date, the LA office is now fully integrated, and such cross-training is proving to be a win-win for both PERB and its employees. To support PERB's cross-training efforts, the General Counsel staff has also created a litigation database to serve as an institutional knowledge resource for all PERB staff and attorneys.

PERB's Chief Administrative Law Judge (ALJ) has expanded cross-training into the ALJ ranks. When appropriate to do so, senior attorneys in the General Counsel's office have been utilized to adjudicate formal hearings, affording these attorneys the opportunity to learn the work of an ALJ. It should be noted that many PERB ALJs started their careers at PERB and have worked their way up through the ranks, reflecting PERB's commitment to hire from within.

PERB also embraces technology as a training tool for its staff. By ensuring that PERB has the most updated software and hardware, the staff is better equipped to broaden their knowledge base, thereby enhancing their work product as well as enhancing their careers.

During my previous service at the U.S. Department of Labor and the California Employment Development Department, I became passionate about developing innovative training programs for individuals who are entering/reentering the workforce and for those individuals who want to climb up the career ladder. Having this workforce development experience, I

wholeheartedly support succession planning to provide in-house career enhancing opportunities and build career ladders for PERB staff.

ATTACHMENT

PERB REGULATIONS 32792 AND 32793

32792. Request That Board Determine Impasse and Appoint Mediator

(a) After declaring impasse orally or in writing to the other party or after jointly declaring impasse, either or both parties may request the Board to determine that an impasse exists and appoint a mediator. This request may initially be made by telephone, but a request in writing shall follow. The request shall be signed under penalty of perjury that the information alleged therein is true and complete to the best of the requesting party's/parties' knowledge and belief, and contain the following information:

(1) The name, address and telephone number of the employer and the exclusive representative;

(2) The name, title, address and telephone number of the agent to be contacted for each party;

(3) A description of the established unit, the approximate number of employees in the unit and the date the exclusive representative was recognized or certified;

(4) The type of dispute;

(5) the date(s) the parties' initial proposals were presented to the public;

(6) The date negotiations commenced, the number of negotiating sessions and the approximate total number of hours spent in negotiations to date;

(7) The status of negotiations, including the date impasse was declared by the party/parties pursuant to this section, the number of subject matter of issues on which the parties have reached tentative agreement, and the total number and subject matter of issues which remain in dispute;

(8) A clear and concise description of the negotiations which have occurred, including the extent to which the parties have made counter-proposals and have discussed the issues which remain in dispute, and any facts which indicate that future meetings without the assistance of a mediator would be futile.

(b) Unless the request is made jointly, the filing party shall concurrently serve a copy of the written request on the other party. Proof of service pursuant to Section 32140 shall be filed with the regional office.

32793. Board Determination of Impasse

(a) The Board shall, within five working days following the receipt of the written request for appointment of a mediator, orally notify the parties that the Board has determined that:

(1) An impasse exists and a mediator has been appointed, or

(2) Impasse has not be reached.

(b) Thereafter, the Board shall serve the parties with written notice of the determination.

(c) In determining whether an impasse exists, the Board shall investigate and may consider the number of length of negotiating sessions between the parties, the time period over which the negotiations have occurred, the extent to which the parties have made and discussed counter-proposal to each other, the extent to which the parties have reached tentative agreement on issues during the negotiations, the extent to which unresolved issues remain, and other relevant data.

(d) "Working days," for purposes of this Section only, shall be those days when the offices of the Public Employment Relations Board are officially open for business.

(e) The determination as to whether an impasse exists shall not be appealable to the Board itself.

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Goals and Accomplishments

1. *What are your goals and objectives as State Architect? What do you hope to accomplish during your term? How will you measure your success?*

   The goals and objectives that will be accomplished during my term as State Architect include:

   - The Division of the State Architect (DSA) offices are revitalized and fully operational with contemporary management processes and procedures based on the principles of a collaborative project development and review process.
   - All DSA offices fully electronic for plan submittal, plan review, and project closeout.
   - The DSA office locations aligned with incoming and ongoing workload.
   - Resources adjusted and aligned with projected workload for plan review and construction oversight needs including resource leveling as appropriate for peaks in workload.
   - The DSA Academy in place and serving the training needs of the state, counties and cities relating to state policy, codes and regulations as they affect the built environment.
   - The DSA meaningfully involved in the establishment of statewide policy related to the built environment including sustainability. This will involve collaboration and coordination between various agencies, departments, divisions, and offices involved in design and construction across the state.
   - All new school construction includes provisions for ultraclean or renewable energy generation that provides for the facility to be grid neutral (i.e., net zero energy on an annualized basis).

   Overall, I will measure my success by my ability to fulfill each of these goals prior to the end of my term. In working toward the achievement of each of these goals, I have set milestones and am monitoring the attainment of those milestones on both a weekly and monthly basis and making adjustments as necessary. I believe that the achievement of these specific goals is critical in providing improved levels of service tailored to DSA's customer needs.

2. *What have been your most significant accomplishments as the State Architect?*

   - Bin time, the period of time between when a project with all documents complete is submitted by the district and the date at which time the plan review is initiated by DSA, has been reduced almost 45% to an average of less than three weeks. To expedite project review statewide, DSA Regional Offices burdened with heavier workloads are transferring projects to those Regional Offices with lower bin times.
   - Reorganized the four DSA Regional Offices creating a project services function and expanding the construction oversight function in order to provide improved service to our customers.
   - Opened Satellite Offices in Bakersfield and Riverside to better serve K-12 and

Community College Districts and their design professionals in these growing areas. In addition, Regional Office boundaries were redrawn with San Luis Obispo County being transferred to Region I (San Francisco Bay Area Regional Office). This realignment relieved Region III (Los Angeles Regional Office) so that they can tend to other growing districts.

- Implemented electronic plan review in all four DSA Regional Offices to improve timeliness of plan review. To date, 120 sets of plans have been reviewed electronically.
- DSA Academy successfully established in 2006 to promote quality design and construction of educational facilities and other governmental buildings in California by providing centralized training to the design community, districts, and DSA staff and their consultants on the application of building codes. The Academy was launched with four basic courses in structural, access, and fire and life safety code requirements. In all, 1,500 DSA staff, external professional consultants, and school district, county and city personnel have attended or are registered for Academy classes. In 2007, the Academy expanded by offering nine additional courses while updating existing classes to incorporate the recent changes in the building code. DSA is in the process of establishing permanent Academy teaching space at DSA headquarters in Sacramento.
- DSA was heavily involved in the development of the new International Building Codes for Structural, Access, and Fire and Life Safety which were adopted by the Building Standards Commission in preparation for the July 2007 publication of the 2007 Edition of the California Building Standards Code, California Code of Regulations, Title 24.
- Regulations to support implementation of the Voluntary Certified Access Specialist program (CASp) authorized by Government Code (Sections 4459.5 – 4459.8) currently in the final stage of the regulations adoption cycle.
- Developed Collaborative Process with representatives of the Community College and K-12 communities. This new process will directly address issues of timeliness, consistency and accuracy in plan review and revolutionize the DSA service delivery system. Developed in partnership with the Community Colleges AB 162 (Collaborative Process) was signed into law in the fall of 2006. Implemented portions of the Collaborative Process in partnership with the Community Colleges and expanded it extensively with specific districts including Los Angeles Community College District, Los Angeles Unified School District, and San Francisco Unified School District.
- Aggressive recruiting plan implemented resulting in a reduction to the vacancy rate of 23% in April 2005 to a vacancy rate of 13% today.
- The State Architect and DSA personnel active in professional and trade organizations such as the Coalition for Adequate School Housing (CASH), the Community College Facilities Coalition (CCFC), the School Facilities Manufacturers Association (SFMA), Consulting Engineers and Land Surveyors of California (CELSOC), the Association of General Contractors (AGC), Structural Engineers Association of California (SEAOC), and the American Institute of Architects (AIA).
- Beginning January 2007, the State Architect serves as a commissioner on the

California Seismic Safety Commission.

- The State Architect co-chairs the Green California Schools Summit Advisory Board with State and Consumer Services Agency Secretary Rosario Marin.

School Construction

3. *What is the current bin time for school construction plans?*

   Overall, the bin time has been reduced almost 45% from the time of my appointment in April 2005. Currently, the average bin time across all DSA Regional Offices is 2.7 weeks. Within each discipline, average bin times vary slightly with Access at 3 weeks, and 2.5 weeks each for Fire and Life Safety and Structural Safety.

   In April 2005, the average bin time across all DSA Regional Offices was 6.1 weeks. Within each discipline, average bin times were 5.9 weeks for Access, 6 weeks for Fire and Life Safety, and 6.5 weeks for Structural Safety.

   Bin time is defined as the period of time between when a project with all documents complete is submitted by the district and the date at which time the plan review is initiated by DSA.

4. *Are you satisfied with the school construction plan approval process?*

   Conceptually, yes. However, the approval process continues to provide all involved parties—internal and external—opportunities for improvement.

   For instance, there are opportunities during a project's design and development that all parties—DSA, and the district and their design professionals—would benefit from increased levels of collaboration. For example, during this time all parties should review the technical code requirements and schedule for the project and resolve any technical deficiencies prior to DSA project submittal. Currently, the first time DSA typically has interaction with a client is upon the project's completion and submittal to DSA for plan review. This potentially results in rework of the project and needless time delays.

   Other opportunities for improvement exist within the design community. Many projects are submitted incomplete to DSA for plan review. Incomplete projects cause unnecessary delays during the plan review and back check period. Often design professionals take too much time making corrections during the back check period. DSA is challenged to encourage school districts to manage their design professionals and to provide incentives to these parties to support the certification of projects in a timely manner.

   This collaborative partnership needs to continue through to the project's construction completion and DSA project certification. Currently, DSA is working to closeout and certify a backlog of projects. Project architects, inspectors, districts and DSA are working to complete the effort.

   Electronic plan review is being conducted by DSA and all project architects are being encouraged to use this service in order to expedite project review and conserve resources, including paper. Also, DSA is currently developing plans to expand the scope of its plan review to include Mechanical, Electrical, Plumbing and Energy to

ensure that projects are broadly focused on all parts of the California Building Code, Title 24.

5. *Have you been able to fill your staff vacancies? If not, how many do you have now? Have you been able to hire the needed structural engineers and architects?*

   Yes, the DSA has been very successful in filling its staff vacancies over the past two years. Today, 300 positions (technical and non-technical) are authorized with 40 positions vacant (13% vacancy rate). In April 2005, 311 positions were authorized and 71 of those were vacant (23% vacancy rate).

   Currently, 27 of the 40 (68%) vacant positions are in the technical classes of Engineer, Architect, and Fire and Life Safety Officer as compared to April 2005 when 55 of the 71 (78%) vacant positions were in these technical classifications. These positions are difficult to fill because of a shortage of licensed structural engineers and licensed architects statewide. However, we have a full recruiting program in place with the goal of filling these positions.

   The total number of authorized and vacant positions in April 2005 and July 2007 for each of the technical classes of Engineer, Architect, and Fire and Life Safety Officer follows:

	CLASSES	AUTHORIZED POSITIONS	VACANT POSITIONS
AS OF 7/07	Structural Engineer	113	7
	Architect	48	16
	Fire and Life Safety Officer	22	4
	Total	183	27
AS OF 4/05	Structural Engineer	123	29
	Architect	53	19
	Fire and Life Safety Officer	21	7
	Total	197	55

6. *Have you proceeded with the reorganization of your four regional offices? What organizational changes have you made?*

   Yes, the Regional Offices are in the final stage of reorganization and will improve service delivery to our clients. First, a new Project Services Unit and an Access and Fire and Life Safety Plan Review Unit has been established in each Regional Office. Second, to provide service to growing regions, one Satellite Office has been established in Riverside and a second office in Bakersfield.

   Third, a focused initiative to closeout and certify 6,000 projects statewide by year-end is currently underway. Lastly, a new Field Supervision Program is being piloted in our Sacramento Regional Office to increase levels of service from DSA on projects during their construction phase. For the pilot, a Construction Supervisor classification, new to DSA, is being used to augment current resources and provide

construction oversight for non-structural milestones including Fire and Life Safety, Access, and Mechanical, Electrical, and Plumbing.

7. *Have you been able to shift workload between your regional offices to reduce plan review time?*

   Yes, on a weekly basis the inventory of projects is examined and the work is shifted between Regional Offices to most effectively expedite project review within the DSA. This workload shifting has supported expedited plan review timeframes because wait times for the initiation of plan review has been decreased.

Building Code Update and Disability Access

8. *Has the U.S. Justice Department certified the state building code as meeting the requirements of the Americans with Disabilities Act?*

   No, although a substantial amount of revisions to the code were recently approved by the California Building Standards Commission that will become effective in January 2008. DSA staff has estimated that the ADA certification process that started in 2002 may not be complete until at least 2010 because of the Federal Government's process; however, the Federal Government is currently in the process of adopting new ADA standards for design. If that adoption occurs, the DSA certification effort will require a reevaluation.

   In September 2002, the DSA submitted the current code, 2001 California Building Code (CBC), to the United States Department of Justice (USDOJ) with a request for certification that the CBC meets or exceeds the new construction and alterations requirements of the ADA. The submittal included over 350 pages of side-by-side analysis which contained proposed revisions, additions, and deletions to the CBC that were considered necessary in order to establish Americans with Disabilities Act (ADA) equivalency.

   In October of 2004, DSA received an initial response from the USDOJ regarding the DSA September 2002 submittal. The USDOJ October 2004 response, which is posted on the DSA website, is approximately 300 pages and addresses over 800 issues.

   In May of 2005, the DSA responded to over 500 of those issues in a *Part 1* submittal to the USDOJ. DSA is in the process of working on the other 300 issues and anticipates submittal to the USDOJ by mid-2008. In January 2006, the USDOJ responded to the DSA *Part 1* submittal by indicating that the vast majority of items proposed by the DSA were acceptable for ADA certification. As a result, the DSA proposed those changes in the California Building Standards Commission's rulemaking cycle which began in May 2006 that reflect the USDOJ January 2006 response (*Part 1* submittal).

   In January 2007, the Building Standards Commission approved the DSA proposed code revisions submitted in May 2006 (the 2007 California Building Code). In January 2008, the 2007 California Building Code will become effective.

   Additional code revisions are planned for proposal to the Building Standards Commission in September of 2007.

The process for ADA certification is complex, takes time, includes public participation meetings, interaction with the USDOJ, and revisions to building standards in accordance with California rulemaking law. The DSA has devoted full-time staff to interact with the USDOJ. While the DSA is closer than it has ever been to obtaining ADA certification, in order for the CBC to be formally certified a substantial amount of work still lies ahead. Based on the many variables involved, it is quite difficult to predict a definite date as to when ADA certification will be secured. DSA staff has estimated that the ADA certification process may not be complete until at least 2010; however, during the course of the ADA certification process, the CBC will undergo significant changes that will be aligning or exceeding it with the minimum ADA standards prior to the actual certification. It should also be noted that the Federal Government is in the process of adopting new ADA standards for design. When that occurs, the DSA certification effort will require a reevaluation.

9. *How have you addressed the concerns of the disabled community over some of the building code changes that were initially proposed? What process exists for allowing the disabled community or any other interested party to communicate concerns?*

   The disability community did express concerns over some of the recent building code changes, and the DSA did withdraw several code changes at their request. Some changes, however, were required by the USDOJ for ADA certification. Most notably, the elimination of the "California shower" was deemed by USDOJ to be a violation of the ADA.

   The DSA Advisory Board includes an Access Committee that is responsible for the review of access concerns and makes recommendations to the State Architect. In addition, both the DSA and the Building Standards Commission have public participation committees in place that conduct public meetings wherein stakeholder concerns can be communicated. To increase participation, the DSA makes their Regional Offices in San Diego, Los Angeles, Sacramento, and the San Francisco Bay Area available for public participation via videoconferencing. Additionally, the formal rulemaking process establishes a 45-day public comment period.

Green Building Issues

10. *Please describe the State Architect's role in promoting green building. Do you have specific criteria or standards for green building that have been adopted and are public?*

    The State Architect has been a leader and role model for high performance and sustainable buildings. In 2002, DSA developed and initiated a process for the review of school projects to ensure compliance with the California Energy Code. This program was originally established as a requirement of the Proposition 47/55 grant program.

    In 2003, DSA began promoting the Collaborative for High Performance Schools (CHPS) as the school design standard. Executive Order S-20-04 required the DSA to "adopt guidelines by December 31, 2005, to enable and encourage schools built

with state funds to be resource and energy efficient". To fulfill this requirement, the DSA adopted the CHPS Best Practices Manual as an appropriate guideline to enable and encourage schools built with state funds to be resource and energy efficient. Over 20 school districts across the state have adopted CHPS as a required standard for all school design and construction.

In addition to CHPS as a guideline for sustainable design, DSA is also collaborating with LEED for Schools, which was recently released, and other organizations such as Global Green in developing standards.

The DSA is working with the Office of Public School Construction (OPSC) in establishing funding guidelines and regulations for awarding the $100 million of Proposition 1D funds allocated to encourage the construction of High Performance Schools. In conjunction with this process, DSA is also working with OPSC, the DGS Green Team, photovoltaic system design professionals, and school district personnel in a collaborative effort to develop a comprehensive renewable energy action plan to maximize the deployment rate of photovoltaics on our public schools both for new construction and modernization projects.

Among other activities, the State Architect is co-chairing with State and Consumer Services Agency Secretary Marin, the Green California School Summit in Pasadena in December 2007 and DSA is participating in the development of the new sustainability regulations that will be part of the California Building Code, Title 24, Part 11. Also, DSA is in the process of certifying 23 of its key staff as Leadership in Energy and Environmental Design (LEED) Accredited Professionals.

11. *You have been active in green building issues at the State and Consumer Services Agency. You recently spoke to the Green Building Standards Subcommittee of the Building Standards Commission and spoke about the need for "financial incentives" to encourage green building, including for state buildings. What specific kinds of financial incentives do you support to promote green buildings?*

I support incentives for both renewable generation and energy and resource efficiency as both contribute substantially to Green House Gas (GHG) reduction. Specifically:

- Modify California Public Utility Commission (CPUC) tariffs to provide feasible net metering agreements to all Government/non-profit customers that will allow:
    a. Aggregated net metering of ultraclean or renewable energy with limited restrictions that would allow entire school districts to be aggregated as a single customer.
    b. Incentive payments for production capabilities above single site demand.
    c. At least one demand-free bundled rate for all utilities.
- Modify Renewable Energy Credits (REC) program to require mandatory compliance, with penalties for failure to comply, and allow utilities to purchase credits without purchasing power.
- Extend and accelerate the existing Investor Self-Generation Incentive Program (SGIP), solar incentive program, with a dedicated funding pool reserved for the Government/non-profit sector.
- Grandfather or reinstate SGIP rebate applications which have expired due to the

utility tariff issues that have caused projects to be delayed.

- Make renewable energy generation capability a prerequisite in all new construction and modernization funding requests to the Office of Public School Construction (OPSC).
- Authorize a revenue bond program to provide construction capital for Life Cycle Cost (LCC) effective energy efficiency and renewable energy projects with repayment from future reductions in support budget operating costs, either through the Pooled Money Investment Board (PMIB) or managed directly by the State Treasurer.
- Provide a third-party capital funding mechanism for Life Cycle Cost (LCC) effective energy efficiency and renewable energy projects with repayment from future operating budgets.
- Provide State investment tax credits for energy efficiency and renewable energy projects and support the extension of existing Federal credits currently due to decrease from 30% to 10% at the end of 2008.
- Directly appropriate funds for life-cycle cost-effective projects recognizing payback in reduced General Fund costs in future support budgets.

12. *Do you, or anyone in the Department of General Services, have a specific inventory of state buildings, the amount of electricity and water they use, and the specific actions that have been taken to reduce their energy and water consumption?*

    The DGS has two databases—one that identifies all state facilities and another that quantifies the amount of electricity used by DGS owned/operated buildings. The amount of water used in these buildings is not currently gathered by DGS. However, most state agencies, including DGS, do have records on the energy and water use of their buildings and those energy and water efficiency measures that have been implemented.

    To provide an inventory of energy usage statewide, all state agencies including DGS, either already have or are currently entering energy usage data into the U.S. Environmental Protection Agency's Energy Star Portfolio Manager benchmarking tool. The inventory's completion is expected by the end of September 2007. The efforts already underway for the Leadership in Energy and Environmental Design (LEED) certification of state facilities will capture the energy and water conservation measures implemented for each facility as LEED evaluations are completed.

Revitalizing the Office of the State Architect

13. *How is the revitalization of your office proceeding? What types of activities have you instituted to facilitate better communication between architects and your office before construction plans are submitted?*

    The revitalization continues to proceed with numerous changes already implemented and others planned for the future.

    - To facilitate better communication between architects and DSA, several measures have been taken including the establishment of a DSA Academy in

April 2006. The Academy's purpose is to promote quality design and construction of educational facilities and other governmental buildings in California by providing centralized training to the design community, districts, and DSA staff and their consultants on the application of the building codes as they relate to school design. To date, 1,500 students have participated in or are currently registered for the 23 classes offered.

- DSA is participating in formal strategic partnering initiatives with Los Angeles Unified School District (LAUSD), Los Angeles Community College District (LACCD), and San Francisco Unified School District (SFUSD). Through these partnering efforts, quarterly and issue-specific sessions are conducted and have supported all involved parties in finding ways to work together more effectively and ultimately improving results for all.
- The Collaborative Process for Project Development and Review (AB 162, Chapter 407, Statutes of 2006), provides numerous opportunities for collaboration between the districts and their design professionals, and the DSA during project design and review. Through the strategic partnering initiatives with LAUSD, LACCD, and SFUSD, several components of this new collaborative process have been developed and are being utilized. Plans for the future include complete development of this process.
- Statewide teams that include membership across DSA are operational in each of nine specific technical subject-matter areas and are focused on issues related to the review of plans for consistency and accuracy in the interpretation of building codes. The results achieved by the statewide teams have provided improved service to architects including clearer and timelier direction in the application of the building codes used in school facility design.
- Electronic plan review is being utilized in each of the DSA Regional Offices providing more expedient plan review services to clients. In addition, the process provides the ability for all parties to collaborate on a project electronically and confer through Web-based conferences to review and resolve issues with essentially no lag time.

14. *Have you achieved the consistency within and between your offices that you sought last year?*

Through the numerous efforts I mentioned in my responses to many of the previous questions, I believe the consistency within and between the DSA Regional Offices has significantly improved. My management team and I are diligently working at instituting modern management practices in order to identify and resolve potential issues before they arise and deliver service that best meets customer expectations overall.

August 2, 2007

STATE BAR CONFIRMATION QUESTIONS

1. **Brief statement of goals. What I hope to accomplish during my time on the State Bar Board of Governors, and how I will measure my success.**

   My number one goal is to represent and protect the general public and consumers of attorney services.

   To that end I hope to increase the transparency of the State Bar's business operations, programs, and policies whenever/however possible.

   In particular I want to focus on the fiscal operations of the Bar to ensure that lawyer members' dues are used effectively, efficiently and appropriately.

   My other priorities are to increase access to legal services in underserved communities and to continue the diversity pipeline endeavors to attract more women and minorities into the legal profession.

   Building Fund Assessment

2. **As a member of the Stakeholder Relations Committee of the Board of Governors, you help make recommendations to the full board regarding State Bar positions on legislation. Were you aware of the building fund assessment controversy when SB 686 was reviewed by the Stakeholder Relations Committee at the 5/11/07 meeting?**

   I was briefed at the May 11, 2007 Stakeholders Relations Committee meeting about the controversy and was told that the Legislature had not been adequately informed of the Board's request.

   In my oversight as a Board Governor, I will insist that the Legislature and Governor's office be consulted on matters of such importance, and I will ask follow up questions to make sure that the consultation has in fact been undertaken.

3. **What is the process for entering into agreements to construct, purchase, or lease a State Bar facility? Do you believe the Legislature should be a part of the process? If so, what role should it play?**

   As the Legislature and Governor's Office have oversight and approval of the State Bar's funding, it is important that public officials be kept apprised and ultimately approve plans for acquisition of real property and staff office space.

   The Bar must obtain legislative approval prior to making any final decisions. Additionally, it is imperative that the Bar consult with legislative officials

prior to developing a recommended course of action.

As the Bar's lease in Los Angeles does not expire until 2014, there is ample time for thoughtful planning and consultation. I understand that the Bar will use a consulting firm with expertise in Los Angeles area commercial real estate that will provide an analysis on the most cost effective approach.

Once again, I would like to stress the importance of conducting these presentations at open, public meetings of the Board of Governors. Once a Board consensus is reached, the State Bar will consult with the Legislature. Board decisions must be discussed in closed session, but once a decision is made, an open and competitive bidding process would begin.

4. **As a member of the Audit Committee, please tell us what role you think the committee should take in overseeing and responding to the problems raised in the state auditor's report. How does the committee plan to address the issues identified by the state auditor?**

As Los Angeles City Controller, I certainly understand the importance of tracking audit recommendations for implementation. It is only through regular updates on each identified problem that we can make progress towards resolution. This is not only a concern for the Audit Committee, but for the full board. Each member of the board has a responsibility to ensure that the Bar carries out its mandates and does so efficiently and effectively. I fully intend to exercise my role in providing policy oversight and supervision of the Bar's staff to make sure this occurs.

We received and reviewed the Bar's 60-Day Status Report filed with the State Auditor on June 20, 2007. This report indicates that the State Bar is pursuing an aggressive strategy to address all of the specific concerns raised by the State Auditor.

As Los Angeles City Controller, I was particularly impressed with the State Bar's new budget format that aligns the Bar's budget with its strategic planning process. While not a formal member of the Planning and Budget Committee, I participated in its meetings so that I might become better acquainted with the Bar. The new format makes it easier for all stakeholders to understand the Bar's functions and how its resources are allocated. The Board approved the 2008 budget at its July 20, 2007 meeting.

Professional Liability Disclosure Proposal

5. **Do you believe requiring attorneys to disclose whether they have professional liability insurance will sufficiently address instances when clients lose money because of an attorney's negligence?**

As a public member of the Board of Governors, my primary focus is on public protection which is, and should always be the Bar's highest priority. We need a

system that protects the public from attorney misconduct. We also need to make sure our Client Security Fund is adequately funded to reimburse clients defrauded by their attorneys.

I feel it is important that a client have relevant, easily available information to help make an informed decision when considering whether to hire an attorney. While having this information alone will not completely address instances when clients lose money because of an attorney's negligence, it would arm the client with information about whether an attorney carries malpractice insurance. If requiring disclosure will improve public protection, then I would likely support it.

6. **How does the State Bar propose to enforce the attorney disclosure requirement?**

The Board of Governors can only recommend a course of action to the Supreme Court, which has the ultimate decision on whether to adopt the proposed insurance disclosure requirement.

6. **What is the State Bar doing to help make professional liability insurance more affordable and available to attorneys, particularly small firms and solo practitioners?**

The State Bar sponsors a Professional Liability Insurance program that is tailored for and marketed to small firms and solo practitioners. The program is designed to add an additional market for California lawyers that will remain stable and available in the up and down business cycle associated with liability insurance.

The State Bar's program is the second largest in California and is managed by a group of volunteer attorneys who review the program at quarterly meetings with the broker and carrier.

To ease the insurance burden, the State Bar Professional Liability Program recently added a starter policy for new admittees to the Bar. The goal of this program is to impress upon new attorneys the importance of building the costs of professional liability insurance into their overhead and business plan.

Laura N. Chick

LAURA N. CHICK

William H. Gailey

SENT VIA FACSIMILE AND FEDERAL EXPRESS

August 1, 2007

Ms. Nettie Sabelhaus,
Rules Committee Appointments Director
State Capitol, Room 420
Sacramento, California 95814-4900

Dear Ms. Sabelhaus:

Thank you for the opportunity to respond to your questions regarding my confirmation for appointment as a Public Member to the State Bar Board of Governors. Also, enclosed is my Form 700, Statement of Economic Interest.

GOALS

1. Please provide us with a brief statement of goals. What do you hope to accomplish during your time on the State Bar Board of Governors? How will you measure your success?

My hope is to continue in my long record of public service by contributing a fresh perspective in establishing policy, and guidelines for the successful operation of the California State Bar. As a longstanding member within the public safety community, I am interested in ensuring that the public remains represented and protected in discussions that come before the Board of the State Bar.

I will remain steadfast in my commitment to diversity in the bar, and within the judiciary. I will support and encourage more voluntary commitment by members of the bar toward strengthening access to justice by providing legal services to those who cannot afford it.

Instead of being mere placeholders, I will ask the Board to involve and encourage

their public members in playing a more significant role on the board, particularly in areas that involve accountability, and improved relations with the legislature.

My success will be measured by the increased involvement, and discourse by public members on all issues, and discussions that involve board policy. It will also be measured by the on going empirical data provided tracking the results of diversity efforts, and the actual increased number of members of the Bar performing pro bono services to the poor. A final measure of success will be the types of committees, and scope of leadership roles delegated and/or assigned to the various public members.

BUILDING FUND ASSESSMENT

2. As a member of the Stakeholder Relations Committee of the Board of Governors, you can help make recommendations to the full board regarding State Bar positions on legislation. Were you aware of the building fund assessment controversy when SB 686 was reviewed by the Stakeholders Relations Committee at the May 11, 2007, meeting?

Yes; I was present when the Board was briefed on the status of SB 686 (Corbett) at the May meeting. However, I was not present during the January meeting, and not privy to earlier events. My only comment on this issue is that in May, I was concerned about the suggestion that the Bar was "acting without legislative authority," and I paid close attention as to how this issue was presented by staff at the meeting.

Since that time, I have spoken with other fellow governors on the Board, and feel that the Board must have open lines of communication regarding issues of legislative concern. The Board must communicate, and as a public member, I will continue to remind the Board of the importance of early discussion and communication on all issues involving the Legislature.

Since the meeting in May, I have come to learn that the recommended policy makes sense and is sound. It makes fiscal sense to ensure that the Bar has the resources to address its Los Angeles space needs when its current lease expires in 2014, and to

do so with the least amount of economic impact on lawyers. If lawyers continue to pay the $10 assessment, this will permit the accumulation of those funds so that there are resources to build, purchase or lease new space. If this is not the case, lawyers will have to be assessed a much higher amount when the lease expires to address either of those options , and be at the mercy of the market place.

I believe that bar staff should have informed the Legislature at the earliest opportunity on this issue to rule out any concerns with their approach . I hope this situation does not arise again, and as a public member, I will work to ensure that it does not.

3. What is the process for entering into agreements to construct, purchase, or lease a State Bar facility? Do you believe the Legislature should be a part of that process? If so, what role should it play?

As I understand it, the process for entering into these agreements will vary depending upon whether the facility is to be purchased, leased, or constructed.

It is important to retain the integrity of the process by having the legislature involved in all aspects regarding facility needs. It is important that legislative officials be consulted, and that the legislature be actively involved in the review and recommendation of future facility needs.

I have been informed that the present lease on the facility in Los Angeles will expire in 2014. However, in the future, and depending upon whether the facility will be constructed, leased or purchased, I have been informed that the Bar will retain a qualified expert in commercial real estate to advise the Board, and will perform a detailed analysis to determine the most cost effective approach, including space needs and other factors. All expert presentations of information, and Board discussions on these "buy, build or lease" alternatives will be conducted at duly noticed and public meetings of the Board. After consultation with experts, and a Board consensus on this analysis, the State Bar will consult with the Legislature to share the data and invite legislative review and input.

Finally, I believe the Legislature should be an absolute part of this process. It is important that the Legislature be actively involved in the review and recommendation

aspects, as well as being kept informed of all discussions of the relevant pending transactions, and the contemplated approach to any new facility venture.

CALIFORNIA STATE AUDIT REPORT

4. Please tell us how you think the Board of Governors should oversee and respond to the problems raised in the April 2007 state auditors' report.

I think the Board of Governors should continue to ensure that the State Bar pursues an aggressive strategy to address the specific concerns raised by the State Auditor. Every board member shares in this responsibility, and I fully intend on exercising my role in providing policy oversight and supervision on this issue.

Revisions to the 14 departmental plans were completed and submitted on April 30, 2007. The State Bar has a plan in place to catch- up on its monitoring visits of legal services programs by the end of 2007. Efforts are underway to improve staff compliance with the Bar's policy of conducting random audits of case files by supervising trial counsel, and assistant chief trial counsel. It should be noted that the State Auditor observed a 90% compliance rate with this policy.

PROFESSIONAL LIABILITY DISCLOSURE PROPOSAL

5. Do you believe requiring attorneys to disclose whether they have professional liability insurance will sufficiently address instances when clients lose money because of an attorney's negligence?

From the standpoint of public protection, I am in favor of the proposed requirement that attorneys disclose that they do not have professional liability insurance. This disclosure will serve to protect the public, in the event , a client is defrauded by his/her attorney and provide the client with recourse.

However, the efficacy of this disclosure hinges upon an effective disciplinary system to protect the public from attorney misconduct, and a Client Security Fund must be adequately funded so that it can reimburse clients.

As a practical matter, mere disclosure of "not" having professional liability insurance

will not "sufficiently address instances when clients lose money because of an attorney's negligence." However, by having to disclose whether an attorney does not have professional liability insurance affords the client an opportunity to be properly informed in advance regarding this very important issue. After being properly informed, it is then up to the client to make an informed decision regarding their choice of legal representation. Finally, it seems to me that professional liability insurance would certainly be a potential source of financial recovery for an individual who suffers a loss due to the negligence of an attorney.

In closing, this issue is presently out for public comment, and I would like the opportunity to review these comments and consider all of the ramifications before I make my final decision.

6. How does the State Bar propose to enforce the attorney disclosure requirement?

If the California Supreme Court adopts the requirement as proposed, it is my understanding that an attorney who then supplies false information or is otherwise in non-compliance "will be subject to appropriate disciplinary action" in the same manner as any other violation of the Rules of Professional Conduct.

7. What is the State Bar doing to help make professional liability insurance more affordable and available to attorneys, particularly small firms and solo practitioners?

It is my understanding that the State Bar sponsors a Professional Liability Insurance program that is tailored for, and marketed to small firms and solo practitioners. Marsh Affinity is the broker, and Arch Insurance Group is the carrier for this program. This particular program is designed to add an additional market for California lawyers that will remain stable in this market place. This program insures about 6,000 members, the vast majority of whom are in 1 and 2 person offices.

The Bar's program also has established a group of volunteer attorneys who sit on the Committee of Professional Liability Insurance (COPLI) and review the program on a quarterly basis.

Obtaining "affordable insurance" remains a challenge. At the present time, there is

not a "carrier of last resort." I have been informed that unless the legislature mandates an attorney malpractice professional liability program, it is likely that the cost of this coverage will remain unduly expensive to a small percentage of lawyers, most of whom are solo or small firm practitioners. I am told that the State Bar professional liability program recently added a starter policy for new admittees to the bar. This starter policy seeks to educate new attorneys in incorporating the costs of this coverage into their operational business plans.

In closing, if there is any further information required, please do not hesitate in contacting me.

Very Truly Yours,

William H. Gailey

WILLIAM H. GAILEY,
PUBLIC MEMBER
STATE BAR BOARD OF GOVERNORS

Enclos. Statement of Economic Interest

July 17, 2007

Senator Don Perata
JUL 24 2007
Senate Rules Committee

The Honorable Don Perata
Chair, Senate Rules Committee
Room 400, State Capitol
Sacramento, CA 95814

Dear Senator Perata:

Thank you for the opportunity to provide my thoughts about the Contractors State License Board (CSLB) to which Governor Schwarzenegger appointed me January 22, 2007.

I was honored to be appointed to such an important consumer protection agency. I had been aware of CSLB's duties and functions through my service at the Franchise Tax Board for over 20 years.

I have thoroughly enjoyed my time on the Board since my appointment and I was recently assigned to be Chair of the CSLB's Enforcement Committee. The goal of the committee is to "reduce, eliminate, or prevent unlicensed activity and unprofessional conduct that poses a threat to public health, safety, and welfare." I think that goal is key to CSLB meeting its mandated mission to protect consumers.

In the short term, in addition to continuing to learn as much as I can about all of the Board operations, I want to simply continue and build on what I think is an outstanding Enforcement program. Whether it is helping victims of the Angora Fire, battling the underground economy, providing individual consumers with remedies to their problems, or "stinging" unlicensed contractors, CSLB's enforcement efforts are helping the public.

In the future, I would like to expand our partnering efforts with (1) other state agencies, (2) local government agencies, (3) district attorneys and police departments, and (4) the construction industry to maximize our effectiveness. I would also like to see increased resources made available to expand our enforcement efforts and to expand our elder abuse programs.

I look forward to working with you and everyone else in my role as CSLB Board Member. Thank you for your consideration. If I can provide any further information, please contact me at (916) 638-7726.

Sincerely,

Eddie Lang, Jr.
Candidate or Confirmation, Contractor's State License Board

Judith N Frank

July 30, 2007

Senator Don Perata
Rules Committee Appointments
State Capitol #420
Sacramento, CA 95814

RE: Confirmation to California Health Facilities Financing Authority

Dear Senator Perata:

As I enter my seventh year on the California Health Facilities Financing Authority, I'm finding that our role has expanded and our visibility greatly increased. We're making a significant impact on both large and small institutions on a very broad scale.

Our new Treasurer, Bill Lockyer, and our new Executive Director, Barbara Liebert, have been instrumental in encouraging the Authority to be more pro-active in expanding our business and judiciously using the Authority as a forum to address statewide health care issues. This change is refreshing and I look forward to the coming years as a member of the Authority.

I'm also gratified that over the years, both Democratic and Republican Governors (Wilson, Davis, and Schwarzenegger) have appointed me to state-wide commissions. I hope to be confirmed once again by the State Senate so that I can continue in this important position.

Going forward, my priorities as a member of the Authority will be to:

- Resurrect and grow the Authority's bond business through improved relations with prospective borrowers by streamlining the bond application process and taking a pro active role to avoid confrontations and delays at Authority meetings
- Maximize the use of CHFFA's "Help II" program through new and creative marketing strategies
- Work to develop new finance programs to promote and fund information technology systems
- Do our part, as appropriate, to influence lowering health-care costs without compromising quality care and cutting edge treatments
- To help preserve CHFFA's perfect history of no defaults

Very truly yours,



Senate Rules Committee

Statement of Goals

1. **What are your goals as a member of the Lottery Commission? What do you hope to accomplish during your term? How will you measure your success?**
2. **What have been your most significant accomplishments as a member of the Lottery Commission?**

On June 22, 2005, I shared with the Rules Committee that it was my goal "to assist the California State Lottery staff in developing a vision and strategic plan to build lottery sales, and thus, increase contributions to public education." Since that time, the Lottery has undertaken a year-long process of gathering data, commissioning research studies, consulting lottery industry experts and leaders, evaluating Lottery history, and conducting internal planning sessions. On June 27, 2007, the Commission adopted the three year Business Plan which is the Lottery's first long range plan in recent memory. My goal now will be to assist the Director and staff in implementing the actions needed to achieve the strategic vision outlined in the plan.

Fiscal Year 2006/07 marks the seventh consecutive year the California State Lottery has contributed over $1 billion dollars to education. This amounts to over $140 per kindergarten through 12th grade student per year. We have accomplished this by returning an astounding 95% of every dollar back to California in the form of contributions to education, prizes for winners, and compensation to retailers.

In the last year, the CSL began selling lottery products in over 90 Sears stores throughout California, piloted an industry first alternative business model with CVS Pharmacies, introduced innovative ticket packaging never before used in the industry to appeal to mass merchandise and super stores, and introduced the Million Dollar Raffle game. These achievements coupled with implementation of the Business Plan have set the CSL on a new path to growth.

There are obvious factors such as sales and contribution to education that could be used to measure our success. However, my goals, should I be confirmed, are to control expenses as a vehicle to increase revenues, as well as secure additional distribution trade styles as specific effort to the end of increasing contributions to education.

In May the Governor released details of his proposal to privatize the Lottery. He proposed to lease the Lottery to private firm for up to 40 years and, in exchange, the state would receive $14 to $37 billion with the possibility of a large lump sum up front.

The Lottery Commission has a long term strategic plan. As its June 27, 2007 meeting the Commission adopted a business plan that came out of the strategic plan. There is no mention of privatizing the Lottery in these plans.

Privatization of the Lottery

3. **To what degree has the commission discussed the proposal to privatize the lottery?**
4. **Do you believe that privatizing the lottery would be good for the state? If so, what would be the specific benefits?**

The commission has not looked at privatization or leasing the Lottery. I have not seen the details of any proposal sufficient to formulate an opinion at this point. If privatization could increase revenue for education and money for the State, it should be explored. The Lottery stands ready to provide technical assistance, when needed, to the decision makers in this public policy matter.

Contracts

On Tuesday, June 12, 2007, the Lottery fired its Director of Broadcasting and began a criminal investigation. The Director of Broadcasting has signed a contract with a Hilton hotel to house contestants of the Big Spin. Since 2004, the Director had been receiving Hilton Honors points that can be redeemed for travel and accommodations. The Director of the Lottery has said that the Contract with the Hilton hotel had been signed without informing the Lottery.

5. **The Commission must approve contracts over $250,000. The contract called for reserving 80 rooms weekly to house guests of the Big Spin. Why did this contract not come before the Commission?**

   The Lottery entered into a four year contract with option to extend for two additional one-year periods with Jonathan Goodson Productions on 2/3/2003 for Big Spin television show production services. This contract required Jonathan Goodson Productions to procure Big Spin contestant hotel accommodations for approximately 80 rooms per month. The contract between the California Lottery and Jonathan Goodson Productions came before the Commission on 12/6/02 and was approved by a vote of 4-0.

   In the case of the Glendale Hilton contract, a Lottery employee, with no delegated authority to do so, entered into a contractual agreement between the Glendale Hilton hotel and the California Lottery. This contract is void because the employee had no legal authority to sign any contracts on behalf of the Lottery. Under the contract with Jonathan Goodson Productions, it is the responsibility of the Jonathan Goodson Productions to enter into an agreement with the hotel vendor. Because Jonathan Goodson Productions was to hold the contract and because Jonathan Goodson Productions was ultimately billed directly by the Glendale Hilton for the contract in accordance with the original terms of the Jonathan Goodson contract with the Lottery, the Lottery was not aware that a contract existed between our employee and the hotel.

The Lottery dismissed this employee and submitted the criminal investigation to the Sacramento County District Attorney who issued an arrest warrant for misdemeanor violations of Government Code 87100 and Penal Code 70(a) pertaining to acceptance of gratuities by a public official.

6. How is the Commission reviewing and tightening its contracting procedures?

Prior to this incident occurring and over the course of the past year, there has been an extensive review of the delegated authorities within the Lottery and each employee with delegated authorities has been advised of their individual authority. Additionally, the Lottery is engaging in contract manager training to ensure that every employee who is managing a contract is aware of their individual duties and their obligation to the Lottery. Moreover, the Lottery issued a revised Contract Managers Handbook in June 2007, which includes a dedicated section on incompatible activities and ethical conduct standards. Further, on an annual basis, every employee is provided and must sign an acknowledgement the Lottery Administrative Manual section on incompatible activities.

MEGA Millions

In 2005 California joined 11 other states (Georgia, Illinois, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Texas, Virginia, and Washington) in a multistate game called MEGA Millions. In MEGA Millions, a player selects five numbers and a sixth MEGA number. The grand jackpot (getting all six numbers correct) is the same for all states. However, lower-level prizes for Californians are considered parimutuel, meaning payouts are based on sales and the number of winners.

Several years ago Legislative Counsel said that Proposition 37, the 1984 measure that authorizes the lottery, did not allow California to join multistate lotteries. In June 2006 a Superior Court judge ruled that the MEGA Millions game is legal and authorized it to operate in California. The court found that a conflict may exist regarding different jackpot claim periods among partner states and gave the lottery one year to address the issue. The lottery was to report to the court by July 2007 on their progress on changing the different jackpot claim periods.

7. What has been the effect on SuperLotto Plus with the introduction of MEGA Millions? Has there been a shift from SuperLotto Plus to MEGA Millions? What has been the net effect for California?

Prior to the start of MEGA Millions in California, sales for SuperLOTTO Plus were on a declining trend. This is reflective of the lottery industry's experience as player interest in games decline. The introduction of MEGA Millions caused a decline in SuperLOTTO Plus sales, but much of this sales decline was anticipated. When MEGA Millions sales are combined with SuperLOTTO Plus sales for 2005-06, which was the first full fiscal year with both games for sale, combined game sales exceed previous SuperLOTTO Plus-only sales by approximately $90 million.

In 2006-07, SuperLOTTO Plus continued its downward sales trend, dropping a little over $100 million. Although it is difficult to enumerate the shift from SuperLOTTO Plus to MEGA Millions with any precision, a shift was expected and has occurred. In 2006-07, both SuperLOTTO Plus and MEGA Millions experienced lower than expected jackpot levels which is detrimental to any large jackpot game. This had a negative impact on MEGA Millions sales in all MEGA Millions states. In fiscal year 2003/2004, SuperLOTTO Plus sales were $1.16 billion. In fiscal year 2006/07, combined SuperLOTTO Plus and MEGA Millions sales were $1.02 billion. Current trends indicate that SuperLOTTO Plus sales will continue to decline while MEGA Millions sales will continue to grow.

8. **What has been the experience of California players who select the correct first five numbers in receiving payouts compared to participants in the 11 other states? Have they received the same, smaller, or larger jackpots?**

Except for California, all participating MEGA Millions states pay a fixed prize of $250,000 for matching 5 of 5 numbers. Due to legal restrictions, the California Lottery cannot pay fixed prizes without limitation to its prize winners. Instead, the Lottery pays a pari-mutuel percentage of sales for each prize level. In California, the prize allocation is set to achieve average (mean) payouts of $215,000, which is about 14% lower than the other states.

Since California joined MEGA Millions, the average prize payout for matching 5 of 5 numbers is a little over $230,000, which is slightly more than the statistically expected payout of $215,000. However, because of variability of pari-mutuel prizes. sometimes it will be higher and sometimes it will be lower than the fixed $250,000 prize other states pay.

9. **Has the lottery addressed the MEGA Millions payout claim period issue raised by the court last year? If so, how has it been addressed?**

The California Lottery took action along two parallel tracks to address the Court's concerns.

1) Legislation sponsored by the California Lottery was introduced. AB 1251. to change the prize claim period for a multi-state Lottery jackpot or grand prize from 180 days to one year. AB 1251 passed out of two Assembly Committees unanimously and by the full Assembly on a unanimous vote on May 24. 2007. The bill was subsequently held up without a vote in the Senate Committee on Governmental Organization and as a result will not be considered until the next legislative session.

2) The California Lottery explored a number of administrative options to resolve the discrepancy in prize claim periods. That included seeking a change to other MEGA Million state's prize claim periods to match California's 180 day limit

and insuring against the unlikely event an unclaimed jackpot was not distributed to education because of the differing claim periods. No administrative options proved viable.

The California Lottery remains committed to seeing legislation passed that will satisfy the Court's concerns and to working with the legislature to see that AB 1251 and its provisions become law so that the prize claim discrepancy can be resolved.

Foreign Acquisition of GTECH – Principal Lottery Vendor

In January 2006 the Rome-based Lottomatica became the top bidder for Phode Island-based GTECH which operates the California Lottery. In December 2006 the Senate Governmental Organization Committee conducted a hearing on the acquisition. One issue that was discussed at length at the hearing was the degree to which the Lottery Commission was involved in the assignment of the GTECH contract to the Italian Company.

A number of other states also had contracts with GTECH to run their lotteries. Two of those states, Oregon and Rhode Island, had full presentations to their Lottery Commissions, whereas the California Lottery Commission was only informed of the process staff was taking. The Lottery Director said that she kept the Commission informed but it was not a matter the Commission needed to approve or sign.

10. Do you believe the commission was sufficiently involved in the assignment of the contract to run the lottery to the Italian firm?

The Lottery Commission was more than sufficiently involved in the process of evaluating the GTECH/Lottomatica merger and in the decision to give the Lottery's assurance that the merger would not result in the termination of the Lottery's contract with GTECH.

GTECH provides and maintains the Lottery's gaming system hardware, software, and telecommunications infrastructure. To evaluate the merger the Lottery joined with 30 other states in contracting with the accounting firm of Grant Thornton to conduct a financial due diligence review. The Lottery also tasked its Security and Law Enforcement Division (SLED) with conducting its own thorough security background review and investigation of Lottomatica's and its parent company's senior management, officers, and principals prior to the merger. SLED also evaluated past and present legal and regulatory issues associated with the entities, conducted criminal background checks, and traveled to Italy to conduct personal interviews and access Italian records. The Lottery conducts such background and security reviews for any company contracting with the Lottery.

Soon after the merger was announced, the Lottery Commission was briefed on the financial due diligence and security reviews of Lottomatica that were being developed during its public commission meeting in January, 2006. The Commission was provided with updates on the status and findings of the reviews at subsequent public commission meetings in March, May and June of 2006. The Commissioner responsible for overseeing the Lottery's security

operations was regularly briefed on the details of the security review. As Chairman I was provided with regular updates on the status of the financial and security reviews.

Both reviews took approximately six months to complete and found no disqualifying information that would restrict GTECH's ability to meet the terms of its contract or pose a risk to the integrity of the Lottery's operations.

After the reports were finalized and reviewed by the Lottery, then Acting Director Borucki consulted with me before giving GTECH the assurance that the merger would not result in the termination of GTECH's contract. That decision was publicly discussed during the Commission's next meeting in August 2006.

The Lottery's review of the GTECH/Lottomatica merger was publicly discussed before the Commission at five meetings. Each of these meetings was publicly noticed and the merger was specifically noted as an agenda item in four out of five of those meetings. If at any point I felt that the Lottery was not conducting a thorough, comprehensive examination of the merger, or that I needed more information, I would have requested a more formal discussion or a vote on the matter.

Problem Gambling

At the top of the Lottery's main webpage is a button in 6 or 7 point type that is screened gray that says "Play Responsibly". There is also a button that directs a person to the Office of Problem Gambling. If you push the "Play Responsibly" button, a page comes up that office information about problem gambling and how to get help for gambling addiction. The Lottery also contributes financially to support a hotline counseling service and has published brochures on the subject. The California Research Bureau estimates that problem and pathological gambling costs the state $1 billion a year.

The state Office of Problem Gambling has a $3 million budget which pays for staffing a problem gambling hotline. The Lottery last year devoted about $100,000 for its problem gambling program.

11. **Is the Lottery appropriately assisting people who might be problem gamblers, or should it be doing more?**

Last time I came before the Rules Committee I stated that I would make problem gambling awareness a priority during my tenure. Since we last met, the Lottery's problem gambling program has grown and expanded. In fact, in the coming fiscal year, the Lottery will, in addition to their service on the Office of Problem Gambling (OPG) Advisory Board, increase our participation with the California Council on Problem Gambling Board as well. We were pleased to host a luncheon speaking session at our annual sales conference to educate our front line sales staff regarding the problem gambling programs available.

At the suggestion of the Senate Governmental Organization Committee, the California Lottery will transition the problem gambling helpline number it has maintained for nearly ten years (888-277-3115) to the problem gambling helpline used by OPG throughout the state (1-800-GAMBLER). Because of the extent to which the problem gambling helpline number is posted on Lottery machines and materials, this transition will take nearly one fiscal year to complete. However, recognizing the value in having the helplines accessible, the Lottery will fund both helplines during that transition period.

In addition, the Lottery has entered into an agreement with OPG to provide problem gambling awareness brochures year round to our network of nearly 19,000 retailers. The Lottery will also work in concert with OPG to develop and distribute a public service announcement that can be aired year round, in lieu of the current four year old PSA that is only aired during National Problem Gambling Awareness Week. Recognizing that our funding for problem gambling may be better utilized by the OPG, rather than the individual efforts created and maintained by the Lottery, we are working to shift our problem gambling awareness funding from the Lottery directly to OPG for the 2008/09 FY. Finally, we are continuing to discuss a formal problem gambling awareness training program for our front line sales staff, as well as our retailers.

History shows that the Lottery has never shied away from this issue. We are constantly looking for ways to expand this program and educate our staff.

12. Information about problem gambling is not now displayed prominently on the Lottery's website. Do you believe it should be more prominently displayed?

The Lottery webpage displays the problem gambling link in the top menu of every single webpage on the Lottery's website. Additionally, last year we added a problem gambling button to the home page. In February 2007, the Lottery participated in a Senate Governmental Organization hearing regarding the topic of problem gambling. At that time, there was discussion regarding the continuity of the messaging regarding the State's problem gambling efforts and specifically how this information should be displayed on State websites. All of the entity's participating in this hearing agreed to display information in a similar fashion, following the suggestion of Senator Florez and Dr. Timothy Fong from UCLA. In addition to the six pages dedicated to problem gambling information on our website, the Lottery changed its problem gambling home page button to the Office of Problem Gambling's button in accordance with the suggestion of the Senate Governmental Organization Committee. We are always looking for ways to improve our website and remain committed to prominently displaying problem gambling awareness information.

13. Some concerned groups have argued that Lottery ticket sellers should be required to display the Lottery's brochures about problem gambling. What are your thoughts on requiring these brochures to be displayed at Lottery sales points?

The Lottery retail network has historically been supplied with Problem Gambling Awareness brochures developed by the Lottery annually during National Problem Gambling Awareness Week. This fiscal year, the Lottery entered into an agreement with the California Office of Problem Gambling to provide the Problem Gambling Awareness brochures that are used throughout the state. This venture will also allow us to distribute these brochures in multiple languages year round.

July 17, 2007

Senator Don Perata
JUL 24 2007
Senate Rules Committee

The Honorable Don Perata
Chair, Senate Rules Committee
Room 400, State Capitol
Sacramento, CA 95814

Dear Senator Perata:

Thank you for the opportunity to provide my thoughts about the Contractors State License Board (CSLB) to which Governor Schwarzenegger appointed me January 22, 2007.

I was honored to be appointed to such an important consumer protection agency. I had been aware of CSLB's duties and functions through my service at the Franchise Tax Board for over 20 years.

I have thoroughly enjoyed my time on the Board since my appointment and I was recently assigned to be Chair of the CSLB's Enforcement Committee. The goal of the committee is to "reduce, eliminate, or prevent unlicensed activity and unprofessional conduct that poses a threat to public health, safety, and welfare." I think that goal is key to CSLB meeting its mandated mission to protect consumers.

In the short term, in addition to continuing to learn as much as I can about all of the Board operations, I want to simply continue and build on what I think is an outstanding Enforcement program. Whether it is helping victims of the Angora Fire, battling the underground economy, providing individual consumers with remedies to their problems, or "stinging" unlicensed contractors, CSLB's enforcement efforts are helping the public.

In the future, I would like to expand our partnering efforts with (1) other state agencies, (2) local government agencies, (3) district attorneys and police departments, and (4) the construction industry to maximize our effectiveness. I would also like to see increased resources made available to expand our enforcement efforts and to expand our elder abuse programs.

I look forward to working with you and everyone else in my role as CSLB Board Member. Thank you for your consideration. If I can provide any further information, please contact me at (916) 638-7726.

Sincerely,

Eddie Lang, Jr.
Candidate or Confirmation, Contractor's State License Board

Judith N Frank

July 30, 2007

Senator Don Perata
Rules Committee Appointments
State Capitol #420
Sacramento, CA 95814

RE: Confirmation to California Health Facilities Financing Authority

Dear Senator Perata:

As I enter my seventh year on the California Health Facilities Financing Authority, I'm finding that our role has expanded and our visibility greatly increased. We're making a significant impact on both large and small institutions on a very broad scale.

Our new Treasurer, Bill Lockyer, and our new Executive Director, Barbara Liebert, have been instrumental in encouraging the Authority to be more pro-active in expanding our business and judiciously using the Authority as a forum to address statewide health care issues. This change is refreshing and I look forward to the coming years as a member of the Authority.

I'm also gratified that over the years, both Democratic and Republican Governors (Wilson, Davis, and Schwarzenegger) have appointed me to state-wide commissions. I hope to be confirmed once again by the State Senate so that I can continue in this important position.

Going forward, my priorities as a member of the Authority will be to:

- Resurrect and grow the Authority's bond business through improved relations with prospective borrowers by streamlining the bond application process and taking a pro active role to avoid confrontations and delays at Authority meetings
- Maximize the use of CHFFA's "Help II" program through new and creative marketing strategies
- Work to develop new finance programs to promote and fund information technology systems
- Do our part, as appropriate, to influence lowering health-care costs without compromising quality care and cutting edge treatments
- To help preserve CHFFA's perfect history of no defaults

Very truly yours,



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NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

June 22, 2007

Maurice E. Martinez

Dear Mr. Martinez:

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the Colorado River Basin Regional Water Quality Control Board on Wednesday, August 22, 2007. At this time you are not required to appear, but if we receive formal opposition to your appointment, you will be asked to appear before the committee.

We would like to receive an updated Form 700, Statement of Economic Interest, by July 23rd. A copy of the statement you submitted to us earlier is enclosed so that you may review it for any changes that might have occurred.

Following are questions we would like you to address in writing prior to the hearing. Please respond by July 23rd.

Statement of Goals

1. *What are your goals and objectives as a member of the Colorado River Basin Regional Water Quality Control Board? What do you hope to accomplish during your term? How will you measure your success?*

2. *What have been your most significant accomplishments as a member of the Colorado River Basin Regional Water Quality Control Board?*

3. *What do you believe are the most serious problems facing your regional board?*

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State and Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, particularly considering these are part-time positions.

4. *Do the state board and your regional board staff assist you to better understand some of the complex issues before you if you request help? If not, where do you seek help when you need it? Do you have any suggestions on how the state water board's staff might better assist you?*

5. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop Total Maximum Daily Loads (TMDLs), and enforce permit and discharge requirements as well as state and federal water quality laws. However, regional board budgets are not reviewed individually by the Governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided through the state board appeals process instead of through a consistent statewide policy that is proactively established by the state board and implemented by the regional boards.

6. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?*

7. *How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?*

Cleaning Up Polluted Waters

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal storm water permit programs and Total Maximum Daily Load (TMDL) programs, which are required under the Federal Clean Water Act to improve water quality by limiting the amount of pollutants allowed into water bodies.

Currently, regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

8. *Please describe the status of your board's TMDL process. Does your board have adequate resources to develop and implement the required TMDLs?*

9. *How will the board monitor and enforce the TMDLs it has or will adopt?*

Enforcement of Water Quality Laws

Two years ago the office of the secretary of Cal-EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards were among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never sought criminal penalties for serious violations, and generally did not aggressively pursue violators.

10. *What enforcement options do you believe provides the most effective tools for violations of board orders?*

11. *What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?*

New River Pollution

The New River flows north from Mexicali, Mexico, into the United States just west of Calexico. The river has been called the most polluted river in the United States, with raw sewage and industrial waste being discharged into the Mexican portion of the river. In 1998 the regional water board said that the beneficial uses of the New River were impaired by bacteria, volatile organic constituents, nutrients, silt, and pesticides. Two projects in Mexico were developed - Mexicali I and Mexicali II. Mexicali I, which added and upgraded sewage collectors, was completed in 2004. Mexicali II added a 20 million gallon per day wastewater treatment plant which is now online.

12. *The board's Web site provides information on New River water quality data, but this information is not updated after 2005. According to the board's administrative division, it has not been given anything to post since 2005. Why has the New River water quality data not been updated since 2005?*

13. *What progress has been made and what types of water quality impairments still exist, and what needs to be done to address the remaining water quality impairments in the New River?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your time and cooperation.

Sincerely,

DON PERATA

DP:KW

July 11, 2007

Ms. Nettie Sabelhaus, Appointments Director
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

RE: CONFIRMATION HEARING QUESTIONS

Dear Ms. Sabelhaus,

Thank you for the opportunity to respond to Chairman Perata's June 22, 2007 questionnaire regarding my confirmation hearing as a board member of the California Regional Water Quality Control Board, Colorado River Basin Region. Please find attached the updated Form 700 of March 21, 2007. This letter responds to the questions in the same order they are presented.

1. In general, my goal is to continue to ensure we protect and enhance water quality in our Region. Specifically, New River, Salton Sea, and septic systems in the High Desert area of our Region, particular in the Town of Yucca Valley, are at the top of my list.

    a. Even though New River water quality at the Border with Mexico has improved significantly during the last six months due to the new treatment plant for Mexicali, there is still much to be done to ensure the New River meets our state standards and improve water quality in the Calexico area. Therefore, I plan to continue to address New River pollution from Mexico by supporting the on-going development and implementation of TMDLs for the New River and pressing our federal government for cleanup and abatement projects in the Border area to further facilitate cleanup of the river. We will continue to ask Regional Board staff for periodic updates about water quality results for the New River at the Border with Mexico and compliance with TMDLs to measure cleanup progress.

    b. The Resources Agency recently submitted to the Legislature a plan with a preferred alternative to restore the Salton Sea. It is my hope that a restoration project is enacted into law so we can begin work on our Basin Plan to support mandated restoration activities. The Salton Sea's problems cannot be solved by any one agency, but I recognize that the Regional Board needs to continue to implement practicable pollution controls in the rivers and drains tributary to the Salton Sea as an integral component of any Salton Sea restoration effort. I plan to continue support development and implementation of these controls, including TMDLs as necessary. I will continue to direct staff to provide us with updates on TMDL development and implementation and reports on water quality to measure our effectiveness in improving water quality in the tributaries.

Senate Rules Committee

We will also continue to play a regulatory role and advise the Resources Agency on restoration activities.

c. During my last two and one-half years as a Board member, I have learned first-hand about the potential and actual water quality impacts that septic systems are having on groundwater in the High Desert areas of our Region, in particular in the Town of Yucca Valley. The Town relies on the local groundwater aquifers for its municipal drinking water. I plan to ensure our Board addresses that threat in the next four years. We can phase out this threat and measure our success by (1) development, adoption, and enforcement of regulations; (2) gauging the millions of gallons per day of sewage that are treated by the municipal WWTF, which would increase as the number of septic systems are phased out and new and existing developments are permitted and connected to the WWTF); and (3) the amount of treated wastewater that is recycled from the WWTF.

2. I have served on the Regional Board since 2004. I am particularly pleased with our achievements in the NPDES and TMDL programs. I am also encouraged by the New River water quality improvements that resulted from the new wastewater treatment plant for Mexicali. Our Board has ensured that we are current with all of our NPDES permits and fines. On June 26, 2007, our Board held a public hearing regarding implementation of the Silt TMDLs for the Imperial Valley. I was pleased to learn that implementation is ahead of schedule and the farming community in the Imperial Valley has significantly reduced silt loading in the New River, Alamo River, and Imperial Valley drains. I was also pleased to learn of the 98% compliance rate with the TMDLs, and the Silt TMDL efforts of the farming community that have won awards from USEPA and the Governor's Office. I will do my best to ensure we continue to move forward with all of our Programs and improve water quality in our Region.

3. In my opinion the Salton Sea overrides all the other problems addressed in this response. It is just too complex for any one entity to solve—all three levels of government need to speak with consensus and all dischargers of wastes must address water quality if a restoration project is to be successful. Time is of the essence. As I shared with you in my previous answers, I believe we need to continue to implement practicable pollution controls in the rivers and drains tributary to the Salton Sea as an integral component of any Salton Sea restoration effort. Our Board plans to play an active regulatory role to support the restoration efforts.

4. My experience is that the State Board and Regional Board staff are available to provide timely policy and technical information. Attending field tours, the Water Quality Coordinating Committee (WQCC) meetings in Sacramento, and other

water related events, such as workshops and symposiums, have enabled me to better understand and deal with complex water quality issues. Our Regional Board staff makes periodic Program/Issue presentations during Board meetings to update, inform, and educate us on the numerous programs and complex issues under the jurisdiction of the Regional Board. The reports analyze pros and cons of various regulatory options to protect water quality. Mr. Vandenberg, legal counsel from the State Board, also answers questions and provides legal advice during our meetings. On field tours with the staff I have familiarized myself first-hand with hydrogeologic and demographic settings surrounding water quality problems in the High Desert and Banning areas. During the WQCC meetings in Sacramento, exchange of information with members from other water boards and State Board staff presentations provide insight on complex statewide issues. Still, because of the complexity of the issue and emerging water quality threats, I have come to the conclusion that all Board members, not just new members as I suggested two years ago, could benefit if the State Board had a 'Water Academy' for Regional Board members. The academy should cover basic water quality physical, biological, and chemical factors that are key in protecting water quality as well as applicable laws and regulations and core regulatory programs.

5. I have had formal training on conflict of interest when I worked for the City of Los Angeles. Also, I received training on the matter from the Office of the Chief Counsel (OCC) during orientation sessions. Additionally, OCC has provided me with written guidance and advice on conflict of interest, *Ex parte* communications, and adjudicative and quasi-legislative hearings. Furthermore, I took the Ethics training from the Attorney General's website/video to ensure compliance with conflict of interest laws and regulations under the State Fair Political Practices Commission. I have not faced Board agenda issues that could present a conflict of interest for me. Therefore, I have not had to recuse myself from voting on any issue on our Board's agenda since I was appointed to the Board.

6. Even though our budget negotiations with the State Board are often a sticking point because there is just too much work to do and not enough resources for all the Boards, I believe our relationship with the State Board is a very positive one. State Board staff (e.g., OCC) has been very helpful in providing legal guidance on my role as a Regional Board member and during Regional Board adjudicatory proceedings. I believe the WQCC meetings are well organized and productive and have enabled me to exchange ideas with State Board members and other Regional Board members. We continue to ask and receive guidance from the State Board on complex issues. For example, on July 25, 2007, we will be having a Public Workshop on the recently adopted Bacterial Indicators TMDL for the Coachella Valley Stormwater Channel. State Board executive staff has agreed to answer TMDL questions and provide TMDL training during the workshop. I also know first-hand that Ms. Tam Doduc, State Board Chairwoman,

has made improving coordination of Water Board activities at the Water Boards a top priority. In this context, along with State Board Chair Doduc, new State Board Executive Director, Ms. Dorothy Rice, my Regional Board colleagues, and key stakeholders in our Region, I participated in our May 2007 Regional Summit in La Quinta to revise the State Board Strategic Plan. We are excited that the Water Boards continue to address consistency and outreach and education as key strategic goals. As far as accountability is concerned, I respectfully suggest again for your consideration that we should pursue receiving funding directly from the Legislature and have more periodic audits of our programs.

7. I have learned that enforcing state and federal laws to carry out our mandate is always a balancing act because of limited resources. At the Regional Board level, we direct our executive management team to prioritize our limited resources and ensure fully operational Programs are in place to address our water quality control responsibilities under state and federal laws and regulations. We also created an Enforcement Unit to prioritize enforcement and ensure the State Board's Water Quality Enforcement Policy is applied consistently, predictably, and in a timely manner. During the Basin Plan Triennial Review, we will have an opportunity to re-prioritize/identify water quality issues of concern and provide direction to our staff to address them, but we cannot follow up on these issues if there are no resources available. I believe we need more money for Basin Planning, TMDL development and implementation, and non-point source pollution problems, such as agricultural runoff and pollution from Mexico. Please refer to my previous suggestion on direct funding from the Legislature.

8. The TMDL Program is a priority for our Regional Board. During my tenure with the Board, I have learned first-hand that TMDLs are complex, controversial, and difficult to develop and implement because they tackle legacy pollutants and sources of pollution that historically have not been regulated, such as agricultural runoff. Water quality monitoring programs, which are essential for TMDL development, have been historically under-funded and are among the first programs cut. In May 2007, after a spirited public hearing, our Regional Board adopted a Bacterial Indicators TMDL to address water quality impacts on the Coachella Valley Stormwater Channel. We continue to develop and implement TMDLs throughout our priority watershed—the Salton Sea Transboundary Watershed—and overall have a successful program in our Region:

TMDLs adopted:	Silt TMDLs for New River, Alamo River, and Imperial Valley Drains; Pathogen and Trash TMDLs for New River; Bacterial Indicators TMDL for Coachella Valley Stormwater Channel.
TMDLs in Draft Form:	Dissolved Oxygen and Volatile Organic Constituents (VOCs) TMDLs for the New River; Pathogen TMDL

for Palo Verde Outfall Drain (Regional Board has requested USEPA de-list PVOD as impaired)

TMDLs in development: Nutrients TMDL for Salton Sea (to be completed by2009), Pesticides for Imperial Valley Drains (also 2009).

We are particularly pleased with our accomplishments in the Imperial Valley. The silt TMDLs cover the entire Imperial Valley, about 500,000 acres of prime agricultural land with over 6,000 growers/operators, and focus on water quality impacts from agricultural runoff. The silt TMDL compliance rate for the Imperial Valley exceeds 97%. Imperial County Farm Bureau developed and is implementing a TMDL Program that organizes and assists Valley farmers to comply with TMDL requirements. The ICFB program received a Governor's Environmental and Economic Development Award for 2004. Farmers in the Bureau's voluntary program develop and implement their own best management practices to reduce silt in their runoff. Moreover, we just learned during our June 26, 2007, Regional Board meeting in La Quinta that we are ahead of the required load reduction of the Silt TMDLs. The USEPA recently approved a revised 303(d) List for our Region that adds about 15 new TMDLs. We will need more money for TMDL development and implementation so we can maintain our progress and success rate.

9. All of our TMDLs direct executive staff to implement timely and progressive enforcement, including issuance of administrative civil liability complaints against violators of TMDL requirements. While later withdrawn upon compliance, five ACLCs were issued against TMDL responsible parties for failing to implement TMDL requirements. Our TMDLs also implement surface water monitoring programs at various levels (drains, rivers, Salton Sea, etc.) to ensure TMDL "loads" are attained; require Dischargers to develop and implement water quality improvements plans and submit those plans to the Regional Board; and also require certain Dischargers to monitor the quality of their discharges of wastes and submit results to the Regional Board to track compliance with TMDL requirements. To the extent we have flexibility and resources in the Program, we also use the Surface Water Ambient Monitoring Program to track compliance with TMDLs.

10. Enforcement is a statewide priority. We direct our staff to fully implement the State Board's Water Quality Enforcement Policy to use rapid and progressive enforcement to deal with violations of Board orders and illegal discharges. I have learned that many, if not most, noncompliance issues are resolved through informal enforcement at the staff level when we are proactive. Such informal enforcement includes, for example, issuance of a notice of violation if a routine report is late a few days. Personally, I believe we must use Regional Board formal enforcement, such as cease and desist orders, cleanup and abatement

orders, and fines, to deal with the most serious violations that pose a threat to water resources, dischargers who are discharging without a permit or waiver of requirements, and/or dischargers who chronically fail to provide us with essential data, such as monitoring reports. We also need to issue the prescriptive Mandatory Minimum Penalties for violations of NPDES permits and for failure to submit certain stormwater reports and plans. Further, we need to follow up as a matter of priority with formal enforcement at various levels, including the District Attorney or US Attorney, on anyone falsifying data.

11. The California Water Code is clear and prescriptive regarding issuance of MMPs, and staff reports are current with issuance of our MMPs. The State Board's Water Quality Enforcement Policy also provides guidance on applicability of fines. I believe assessing fines and penalties should be a deterrent to recalcitrant violators of Board orders, recalcitrant TMDL violators, non-cooperating parties, and parties that have derived an economic advantage at the expense of the environment or failed to cooperate with the staff during investigation of noncompliance issues. Conversely, when a discharger exercises due diligence in complying with Board orders by, for example, properly operating and maintaining required pollution controls and performing adequate monitoring, has otherwise a good track record, but violates board requirements because of factors beyond its control, such as acts of nature, I believe the California Water Code is also clear that the Regional Board need not exercise its full powers and assess civil liability to deal with matter. Instead, the Regional Board can deal with the noncompliance issue through other formal orders as the situation warrants. These other formal orders include cease and desist orders and time schedule orders.

12. The water quality data for the New River has been collected, but not reviewed by our staff to ensure the results meet monitoring quality objectives. We have directed our staff to review the data and update our Web site as soon as possible.

13. During the last several years, the infrastructure projects for the Mexicali II sewage service areas have come to fruition. Specifically, over 20 miles of sewage pipes have been installed/rehabilitated. Also, as noted in a previous paragraph (Item 1, above), the new 20-mgd wastewater treatment plant is a reality, thus eliminating 12-20 millions of gallons of raw sewage from the New River entering Calexico, which in turn has abated the stench that historically characterized the New River and reduced significantly the bacterial load in the New River at the Border. We still have impairments caused by trash, other non-point sources of pollution (pesticides from agricultural runoff, nutrients, and pathogens from confined animal feeding operations) as well as Mexican-owned industries such as untreated slaughterhouse wastes. Last year, we adopted a TMDL for Trash in the New River. We continue to cooperate with our Mexican

counterparts and pursue adoption and implementation of TMDLs to pressure our federal government to address infrastructure problems in the Border area.

In closing, thank you for giving me the opportunity to answer these questions and letting me share my opinions. I trust this letter answers the questions. I enjoy my service as Board member and look forward to a successful Senate hearing confirmation. If you should need additional information, please call me at (951) 769-3266.

Sincerely,

MAURICE "RED" MARTINEZ

CALIFORNIA LEGISLATURE

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APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

June 22, 2007

Richard W. Post

Dear Mr. Post:

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the Colorado River Basin Regional Water Quality Control Board on Wednesday, August 22, 2007. At this time you are not required to appear, but if we receive formal opposition to your appointment, you will be asked to appear before the committee.

We would like to receive an updated Form 700, Statement of Economic Interest, by July 23rd. A copy of the statement you submitted to us earlier is enclosed so that you may review it for any changes that might have occurred.

Following are questions we would like you to address in writing prior to the hearing. Please respond by July 23rd.

Statement of Goals

1. *What are your goals and objectives as a member of the Colorado River Basin Regional Water Quality Control Board? What do you hope to accomplish during your term? How will you measure your success?*

2. *What do you believe are the most serious problems facing your regional board?*

STATE CAPITOL • ROOM 420 • SACRAMENTO, CALIFORNIA 95814-4900 • (916) 651-4151 • FAX (916) 445-0596

State and Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, particularly considering these are part-time positions.

3. *Do the state board and your regional board staff assist you to better understand some of the complex issues before you if you request help? If not, where do you seek help when you need it? Do you have any suggestions on how the state water board's staff might better assist you?*

4. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop Total Maximum Daily Loads (TMDLs), and enforce permit and discharge requirements as well as state and federal water quality laws. However, regional board budgets are not reviewed individually by the Governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided through the state board appeals process instead of through a consistent statewide policy that is proactively established by the state board and implemented by the regional boards.

5. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?*

6. *How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?*

Cleaning Up Polluted Waters

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal storm water permit programs and Total Maximum Daily Load (TMDL) programs, which are required under the Federal Clean Water Act to improve water quality by limiting the amount of pollutants allowed into water bodies.

Currently, regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

7. *Please describe the status of your board's TMDL process. Does your board have adequate resources to develop and implement the required TMDLs?*

8. *How will the board monitor and enforce the TMDLs it has or will adopt?*

Enforcement of Water Quality Laws

Two years ago the office of the secretary of Cal-EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards were among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never sought criminal penalties for serious violations, and generally did not aggressively pursue violators.

9. *What enforcement options do you believe provides the most effective tools for violations of board orders?*

10. *What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?*

New River Pollution

The New River flows north from Mexicali, Mexico, into the United States just west of Calexico. The river has been called the most polluted river in the United States, with raw sewage and industrial waste being discharged into the Mexican portion of the river. In 1998 the regional water board said that the beneficial uses of the New River were impaired by bacteria, volatile organic constituents, nutrients, silt, and pesticides. Two projects in Mexico were developed - Mexicali I and Mexicali II. Mexicali I, which added and upgraded sewage collectors, was completed in 2004. Mexicali II added a 20 million gallon per day wastewater treatment plant which is now online.

11. *The board's Web site provides information on New River water quality data, but this information is not updated after 2005. According to the board's administrative division, it has not been given anything to post since 2005. Why has the New River water quality data not been updated since 2005?*

12. *What progress has been made and what types of water quality impairments still exist, and what needs to be done to address the remaining water quality impairments in the New River?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your time and cooperation.

Sincerely,

DON PERATA

DP:KW

July 9, 2007

Ms. Nettie Sabelhaus
Rules Committee Appointments Director
Room 420
State Capitol
Sacramento, CA 95814-4900

RE: CONFIRMATION HEARING QUESTIONS

Dear Ms. Sabelhaus,

I am writing to respond to the letter from the Honorable Don Perata, Chairman, Senate Rules Committee, dated June 22, 2007, concerning the confirmation hearing that is scheduled to be conducted on August 22, 2007, to consider my appointment as a member of the Colorado River Basin Regional Water Quality Control Board. Chairman Perata's letter requested that I address 12 questions, categorized by topic, which I have done below in the order presented in his letter. In addition, pursuant to his request, an updated Form 700, Statement of Economic Interest, is attached.

Statement of Goals

1. In general, my goals and objectives as a member of the Colorado River Basin Regional Water Quality Control Board (Regional Board) are to ensure that existing water quality is protected and that impaired water bodies attain water quality objectives and standards in a timely manner within our Region. Based on my limited time with the Regional Board to date, I have learned that these goals and objectives are accomplished through a variety of mechanisms and programs. They include, for example, timely and effective enforcement of existing permits and other waste discharge requirements (WDRs), adoption of new permits and WDRs to regulate new discharges that could affect waters of the State, timely development and implementation of Total Maximum Daily Loads for impaired water bodies, and working with the regulated community through public participation and outreach programs to inform the community about water quality requirements, to help it address water quality problems identified, and to foster good working relationships.

My specific goals and objectives during my term that I hope to accomplish are: (1) to continue to improve enforcement efficiency with respect to timely and appropriate enforcement against all dischargers who violate permits or other water quality requirements; (2) to continue to address the water quality problems of the New River and the pollution from Mexico that contributes to those problems; (3) to continue to push for the expeditious development and implementation of a Final Remedy for the hexavalent chromium contamination at the PG&E Topock natural gas compressor facility along the Colorado River; (4) to phase out septic systems in the Town of Yucca Valley and its environs; and (5) to encourage continuing development and implementation

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of TMDLs for all of the other impaired water bodies identified in the Clean Water Act Section 303(d) List for our Region.

The metrics by which I would measure the success for each of these goals varies by goal, but the overriding metric of success is to achieve a demonstrable improvement in water quality.

2. I believe that the most serious problems facing our Regional Board are: (1) cleanup of the hexavalent chromium contamination at Topock since many southern Californians depend on the Colorado River for their drinking water; (2) attainment of water quality standards and objectives for the New River, one of the most polluted surface waters in the U.S.; (3) restoration of the Salton Sea since the rising salt levels continue to threaten fisheries and bird life, a situation that will get worse when Colorado River water is transferred from Imperial County to San Diego in accordance with the Quantification Settlement Agreement and those waters no longer drain from Imperial Valley farm lands into the Salton Sea; (4) protection of municipal aquifers in Coachella Valley and the High Desert Areas (e.g., Towns of Yucca Valley and Twenty-Nine Palms); (5) attainment of water quality standards and objectives for other impaired surface waters through the TMDL program; and (6) timely and effective enforcement against dischargers who violate permits or other water quality requirements (e.g., TMDL program requirements).

State and Regional Board Roles

3. State Board staff and, particularly, Regional Board staff, provide invaluable assistance in helping me understand the many complex water quality issues facing our Region. This assistance is provided by State Board staff principally through its promulgation of statewide plans and policies that are announced and posted on the State Board's website. Also, it conducts regularly scheduled Water Quality Coordinating Committee (WQCC) meetings that Regional Board members may attend along with State Board members, State Board executive staff, and Regional Board Executive Officers. The WQCC meetings cover a number of important water quality topics and issues. Upon request, the State Board also assists with Regional Board workshops and hearings on complex issues that may require separate counsel be provided to advise the Board members and Executive Officer when separation of functions concerns arise.

Regional Board staff provides assistance during Regional Board public meetings in which they present informational agenda items. These include updates on various matters that Regional Board staff is working on, such as enforcement goals and achievements.

The Office of Chief Counsel with the State Board also provides assistance. This includes assigning an OCC attorney to represent the Regional Board, its management, and staff regarding all legal matters that come within the Regional Board's purview; providing an orientation of new Regional Board members; and providing written guidance and advice on various topics, such as Conflict of Interest, the *Ex Parte* Communications Prohibition rule, and adjudicatory and quasi-legislative hearings.

Given the range and depth of assistance provided, my only suggestion for improvement would be to encourage Regional Board member participation in periodic field tours so that they could familiarize themselves with hydrogeologic and demographic settings surrounding a particular

water quality issue. This would help them be better able to place into context the specific permits and TMDLs that come before the Regional Board for adoption.

4. The conflict of interest training that I received was during my orientation by OCC as a new Board member. In addition, I have learned about Conflict of Interest principles through written guidance from OCC and the AG's Office. Mandatory ethics training from the AG's Office also helped ensure that I became aware of the potential conflicts of interest that could arise for matters that come before the Regional Board. To date, during my brief tenure as a Regional Board member, none of our current Board members has had to face any Board agenda issues that presented a potential conflict of interest. As a result, no Board member has had to recuse himself or herself from voting on any issue that has come before the Board during its regularly scheduled public meetings.

5. My view of the relationship between the State Board and our Regional Board is as follows. The State Board/Regional Board relationship is similar to a parent/subsidiary in the corporate world. As such, the State Board has certain parent corporation responsibilities, such as overseeing the subsidiary Regional Boards, overturning, if necessary, a Regional Board's decision, and developing plans, policies, and regulations of statewide application to be carried out by the Regional Boards, and approving Regional Board budgets. The subsidiary Regional Board, on the other hand, has certain powers as well, including the power to take enforcement actions, to require dischargers to obtain a permit for that discharge, to carry out enumerated federal Clean Water Act requirements (e.g., issue CWA Section 402 NPDES permits, issue CWA Section 401 Water Quality Certifications), and to hold public meetings, hearings, and stakeholder workshops.

Coordination and accountability appears to be reasonably good so far. For example, and as previously noted above, the State Board conducts Water Quality Coordinating Committee meetings. These allow Board members from all Regional Boards to exchange ideas and to discuss statewide priorities. Ms. Tam Doduc, State Board Chair, has made it clear that a top priority for her is to continue to improve coordination of Regional Board activities. I am aware that the State Board is also addressing consistency issues by developing and adopting more statewide policies towards that goal. In May 2007, Chair Doduc, several Regional Board members, and key stakeholders in our Region participated in a Regional summit to revise the State Board's Strategic Plan. Among the issues addressed in the Strategic Plan were consistency, outreach and education, and public participation. The Regional Board chairs also regularly participate in Chair conference calls. Finally, Management Coordinating Committee meetings are sponsored by the State Board to provide a forum for Regional Board management (Executive Officers) to share and discuss various issues within their Regions. Given this significant amount of coordination, I do not have any suggestions for improving that aspect of the State Board/Regional Board relationship.

The only area that I see could use improvement is in the budget process. Although the Regional Boards develop budgets for their respective regions, those budgets must be approved by the State Board. The main problem with this approach is that the State Board is not really in as good a position as the Regional Board is to know what its priorities and needs are. Even though some negotiation is involved with the State Board on the budget requests submitted, the State Board

ultimately makes the decision as to how much money the Regional Board gets and how that money is to be allocated. While there is some flexibility with certain unencumbered funding sources, there does not appear to be much. My suggestion at this early stage of my tenure would be to consider changing the law so that each Regional Board would be funded directly by the Legislature. Although this might result in some negative and unintended consequences, such as greater overhead costs and duplicative accounting efforts, it would enable each Regional Board to be a more knowledgeable and powerful advocate of its own fate by allowing it to deal directly with the Legislature. My opinion on this topic, however, may change as I get more experience as a Regional Board member.

6. This question concerns some funding/budgeting issues that were touched upon in the answer above. In particular, you asked how the Regional Board is able to address state and federal laws it must enforce within its current funding levels, and whether those funding levels impact the attention that can be given to specific issues. As mentioned, funding and budgeting is an issue since the State Board is the ultimate decision-maker as to who gets what. This funding and budgeting has become an issue because the State Board's decision is not totally in alignment with the Regional Board's request.

It is my understanding that there is a structure in place that helps ensure that each Regional Board carry out is water quality control responsibilities as mandated by state and federal law. This structure consists of various "programs;" for example, the Basin Planning process where a Regional Board can identify and set water quality priorities. Work plans are submitted to the State Board for approval, and internal Regional Board priority setting, such as establishing an enforcement unit, ensures compliance with program requirements. In addition, certain state-wide priorities are established for each Regional Board through the WQCC and MCC meeting process.

Despite this structure, however, the funding and budgeting process limits a Regional Board's ability to control its destiny. As a result, certain items are under-funded and thus, receive less attention than they deserve. For example, it is my understanding that this Regional Board needs more money to implement control of non-point sources of pollution, to better monitor ground and surface waters of the Region, to implement Border activities, and to develop and implement TMDLs for impaired surface waters in the Region. Regional Board management has made it clear that it also has difficulty attracting and retaining qualified professionals to fill staffing positions due to salary disparities as compared with their public and private sector professional counterparts. Unfulfilled staffing needs translate directly into programs and areas of responsibility that cannot be given as much attention as they deserve due to limited and potentially less qualified staff assigned to handle those programs and areas.

Cleaning Up Polluted Waters

7. The status of our Regional Board's TMDL process, and whether the Regional Board has adequate resources to develop and implement the required TMDLs, is as follows. In general, the TMDL program for our Region is reasonably successful. TMDLs have been developed, adopted, and implemented for the entire Imperial Valley and its approximately 500,000 acres of irrigated agricultural lands. The Regional Board also recently adopted a Bacterial Indicators TMDL for

the Coachella Valley Stormwater Channel (May 16, 2007 public hearing). A periodic information update was also provided by Regional Board staff at the June 26, 2007 public hearing concerning the previously adopted Silt TMDL for the New River, Alamo River, and Imperial Valley Drains. Monitoring results to date show that the regulated entities are significantly reducing silt loads to these water bodies ahead of schedule through best management practices. New River impairments are also being addressed through Pathogen and Trash TMDLs that were adopted for that water body.

Regional Board management has also indicated that other TMDLs are in draft form and will be ready for public review and comment over the next year. These include: Dissolved Oxygen and Volatile Organic Constituents TMDLs for the New River; and a Pathogen TMDL for the Palo Verde Outfall Drain. Finally, under development with expected release dates of 2009 are a Nutrient TMDL for the Salton Sea and a Pesticides TMDL for the Imperial Valley Drains.

While all of this TMDL work represents good progress, the Regional Board has been assigned 15 more TMDLs by U.S. EPA pursuant to a revised Clean Water Act Section 303(d) List that it recently approved. This additional work, as well as ensuring timely and effective follow-up with the TMDLs that have already been adopted and the timely completion of TMDLs being drafted or under development, raises, once again, the funding and budgeting issues previously discussed. Since these TMDLs are often controversial in that they attempt to address pollutants and sources of pollution that typically have not been regulated, such as agricultural runoff, they take considerable staff time in developing and getting the TMDLs adopted. Development of the TMDLs is difficult since the determination of what "loads" of pollutants may be discharged into a surface water without causing a violation of its water quality standards must rely on good monitoring data to show the potential sources of pollution and their contribution to the impairment. Since water quality monitoring programs have been under-funded historically, the Regional Board staff are placed in the tenuous position of trying to develop and support a TMDL with, at times, questionable data. This makes peer review by Regional Board management of draft TMDLs that much more difficult and, more importantly, increases the risk of successful legal challenges being lodged against the Regional Board.

Given the above information, it is my understanding that the Regional Board may not have adequate resources to develop and implement the required TMDLs. Furthermore, based on the fact that the U.S. EPA approved 15 more TMDLs that the Regional Board must develop and implement, and based on the Regional Board's limited staffing and budget resources to handle its current workload of TMDLs adopted, being drafted, and under development, it seems unlikely that the Regional Board has sufficient resources to meet the increasing expectations of the U.S. EPA.

8. Monitoring and enforcement of the TMDLs adopted or to be adopted will be accomplished as follows. The Regional Board's TMDLs direct the executive staff to implement timely and progressive enforcement, including issuance of administrative civil liability complaints against violators. In fact, five ACL Complaints were issued for failure to implement TMDL requirements. Regional Board staff implements surface water monitoring programs at various levels of water body types (e.g., drains, rivers, Salton Sea) to ensure that TMDL loads are attained. Adopted TMDLs require dischargers to develop and implement water quality

improvement plans and to submit those plans to the Regional Board for its approval, and to monitor the quality of discharges and submit those results to the Regional Board. The Surface Water Ambient Monitoring Program funds are also used to track compliance with TMDLs.

Enforcement of Water Quality Laws

9. I believe that the most effective enforcement tools for violation of Board orders is to follow the State Board's Water Quality Enforcement Policy principles; i.e., have timely and appropriate enforcement that is fair, firm, and consistent, and that is applied on a progressive enforcement basis. Progressive enforcement means that informal enforcement will initially be taken, such as issuing a letter of non-compliance or a Notice of Violation, to see whether that level of enforcement can address the violation. If the desired compliance results are not achieved, then more formal enforcement action should be taken. These formal actions include: issuance of Administrative Civil Liability Complaints and Orders; Mandatory Minimum Penalty assessment (for NPDES permit violations); issuance of Cease and Desist Orders for violation/threatened violation of Waste Discharge Requirements or Basin Plan Prohibitions; issuance of Time Schedule Orders with or without a penalty for failure to perform; Cleanup and Abatement Orders for spills, creation of nuisance conditions, groundwater pollution, etc.; issuance of Water Code Section 13267 Orders to request technical investigations or data; referral to the AG's office for enforcement; issuance of a Regional Board Prohibition regarding the discharge; and finally, rescission of permits issued.

10. I believe that the role fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act is to make sure not only that they act as a deterrent, but also that they are commensurate with the severity of the violation and the culpability of the violator. Section 13327 of Porter-Cologne encompasses this concept in its listing of the factors that must be taken into consideration when determining the amount of civil liability that may be assessed. As for the violation, these factors include: the nature, circumstance, extent, and gravity of the violation; whether the discharge is susceptible to cleanup or abatement; and the degree of toxicity of the discharge. As for the violator, these factors include: the ability to pay; the effect on ability to continue in business; any voluntary cleanup efforts undertaken; any prior history of violations; the degree of culpability; and economic benefit or savings, if any, resulting from the violation. Finally, Section 13327 makes it clear in the last factor prescribed—other matters as justice may require—that although the determination of the amount of civil liability is discretionary, it is important to apply equitable principles when assessing this liability; in other words, to be just.

Therefore, where a chronic violator continues to violate permit requirements, fails to take steps to prevent future violations, and the nature of the violation is severe in terms of water quality impact, then large fines and penalties should be assessed. Conversely, where a discharger has been cooperative in addressing the violation, the violation is not serious in its potential impact to water quality, and the discharger is not a chronic violator, then smaller fines and penalties may be appropriate.

Where fines and penalties are not appropriate, however, are in those situations where the discharger, despite its best efforts of operation and maintenance, was not able to maintain compliance with permit requirements, or through an act of God or other non-controllable event,

the violation occurred. I believe that whether a discharger should be assessed fines and penalties for other types of non-serious violations, such as submitting a self-monitoring report a few days late, should fall into the discretionary enforcement category.

New River Pollution

11. You asked why the Board's website has not been updated after 2005 regarding New River water quality data. It is my understanding that Regional Board staff needs to review the water quality data reported to ensure that it meets monitoring water quality objectives. I expect Regional Board staff to review that data and update the website with accurate information as soon as possible.

12. Finally, you asked about the progress made for the New River, what water quality impairments still exist, and what needs to be done to address those remaining water quality impairments. Significant progress has made, in part due to the Mexicali I and II projects that you noted were completed, in part due to Regional Board management's efforts working with the bi-national technical advisory committees in Calexico, the Mexican government counterparts, the U.S. EPA, the U.S. Section of the International Boundary and Water Commission, and local Border area public outreach groups, and in part due to Regional Board staff's work on developing, getting adopted, and implementing TMDLs for the New River. As mentioned in response to Question #7 above, Pathogen and Trash TMDLs have already been adopted for the New River. TMDLs in draft form for the New River address Dissolved Oxygen and Volatile Organic Constituents impairments. These adopted and pending TMDLs will help address the remaining impairments of the New River. Regional Board management will continue to work with the public, agencies, and entities involved in the Border area of the New River to help ensure that these impairments are fully addressed as quickly as possible.

Thank you for considering me for appointment to this Regional Board. The water quality issues in the Colorado River Basin Region are very important. Therefore, pending a successful Senate hearing confirmation, I look forward to continue working with Regional Board management and staff on addressing them. If you have any questions or need additional information, please call me at 760-228-2362.

Sincerely,

RICHARD "RICK" POST
Region 7 Board Member

Statement of Goals

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the North Coast Regional Water Quality Control Board? How will you measure your success?*

Answer:

As a newly appointed board member I have attended approximately 5 board meetings, 4 tours and a couple of other meetings. I have dedicated myself to an observing/learning process to familiarize myself with other board members, staff, the Basin Plan, the Porter-Cologne Act and the issues at hand.

My goals are to accomplish the following:

- *To enhance my knowledge of all policy charged to the water board to carry out it's mission to protect high quality surface and ground water and to restore impaired waters*
- *Utilize all resources and tools available to me in order to make good and effective decisions regarding the enforcement of policy*
- *To be firm, fair and consistent in all matters of decision making and expediting action*
- *To encourage providers and dischargers to be proactive in implementing policy regarding water protection/enhancement and to provide input into requests for feedback when developing or modifying policy*
- *To reduce backlog*
- *To be transparent*

The measure of my success will be determined in various ways:

- *The ability to work with and gain respect by other board members, staff, the state board and other entities that come before the board*
- *Resolving issues through good plans and compliance of policy by affected entities*

2. *What do you believe are the most serious problems facing your regional board?*

Answer:

In General:

- *Getting providers, dischargers, environmentalists and other affected entities to take a more proactive approach in their planning, implementing and monitoring of all issues regarding water resource policy (seems most are reactive).*
- *Litigation*

In Specific:

- *Protecting water quality for 12 million acres (40% of states' rainfall runoff) with a small staff of 89 people located in Santa Rosa*
- *Less effectiveness in rural areas of the region due to on hand staff to communicate and monitor caseload. More time needs to be dedicated from water board staff which could be possible via additional field offices if not for budget restrictions*
- *Extremely limited funding for aerial surveillance and water quality monitoring*

State and Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, particularly considering these are part-time positions.

3. *Do the state board and your regional board staff assist you to better understand some of the complex issues before you if you request help? If not, where do you seek help when you need it? Do you have any suggestions on how the state water board's staff might better assist you?*

Answer:

From the onset of my appointment to the board and prior to my first meeting I received an orientation from various staff. The orientation included copies of all policy covering water protection law/regulations, statements of mission and goals and knowledge of all resources available to me such as manuals, documents and staff.

My request for staff briefing on any issue has been at my disposal. The state board offers (and has done so) an orientation on ethical and legal issues. I receive periodic e-mails with attachments that keep me updated on current issues.

I have been impressed with the regional boards ability to pass on information to make understanding complex issues more simple. When or if I desire additional information on issues I may or may not seek out input from various outside sources.

State water board staff could better assist board members by communicating on some regular schedule to voice needs both current and future.

4. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

Answer:

- *I have received the training on ethics and legal issues both from Rio Dell CDO and via the water board's website*
- *I withdraw myself from voting on an issue when the issue involves my participation in the decision making process or even if it appears that I'm connected to the process which would result in a benefit to myself or to an entity I represent*
- *I have recused myself from a board discussion regarding Rio Dell's Cease and Desist Order*

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop Total Maximum Daily Loads (TMDLs), and enforce permit and discharge requirements as well as state and federal water quality laws. However, regional boards budgets are not reviewed individually by the Governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided through the state board appeals process instead of through a consistent statewide policy that is proactively established by the state board and implemented by the regional boards.

5. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?*

Answer:

The limited time and experience that I have on the board has not provided much opportunity to observe above stated relationship but from the little I have observed appears to be a bit cumbersome (hearing statements made at meetings by various entities).

The regional board process calls all interested parties to the table to participate on an issue. This can make for a long and tedious decision making process (hoping to leave no stone unturned).

Following the action taken by the regional board, parties can appeal decisions to the SWRCB providing new facts and claims that may not have been heard before the regional board. The upside of this process is that it is very open and transparent.

Setting policy based upon precedential decisions (which may be good as a basis for guidelines) on individual petitions is not a transparent process. These type of decisions may not work where the SWRCB has set precedent on cases involving another region and our regional board staff is unable (or not effectively able) to participate in creation or modification of policy we need to administer.

Recognition and dedication by the state board of the regional board's needs via the representative from the state board could be critical in the success to improve coordination and accountability. To help regional boards, the SWRCB must clearly understand what regional boards are up against and provide them appropriate policy, technical support and adequate funding.

It's been my experience working with many government agencies that when top level management obtains experienced personnel from field operations, a better relationship develops as well as the importance of working as a team to solve problems and issues.

6. *How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need do to current funding levels and constraints on resources?*

Answer:

The regional water board is understaffed and under funded in many areas:

- *Monitoring – much of the region's waterways are not very accessible by road. Aerial surveillance becomes a vital component for evaluating quality and determining problems. The region gets approximately $200,000 to measure permit compliance, identify ground/surface problems and implement TMDL's (almost 20 TMDL's completed but lack funding for staff to implement them).*

- *Permitting and Enforcement – Keeping up with the NPDES permit workload is a commendable accomplishment while on the other hand resources fall short of being adequate for reissuing permits and overseeing even priority discharges to land (WDR's) that may affect water quality.*
- *The regional office in Santa Rosa, with most of the region north. A one way trip from Santa Rosa to the Klamath area is 6 hours. Office space is needed in the more remote locations.*

Cleaning Up Polluted Waters

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal storm water permit programs and Total Maximum Daily Loads (TMDLs) programs, which are required under the Federal Clean Water Act to improve water quality by limiting the amount of pollutants allowed into water bodies.

Currently, regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

7. *Please describe the status of your board's TMDL process. Does your board have adequate resources to develop and implement the required TMDLs?*

Answer:

Region 1 has focused on completing TMDL's required by a consent decree since 1998 and more recently for Elk River and Freshwater. TMDL's currently under development are:

- ***Klamath Main Stem** – technical TMDL and implementation plan*
- ***Russian River** – technical TMDL for impairments that pose public health threats such as: 1. mercury in Lakes Pillsbury, Sonoma and Mendocino*
  2. pathogens
- ***Laguna de Santa Rosa** – technical TMDL for nutrients, sediment and temperature*

Implementation is underway in the Garcia, Salmon, Scott and Shasta waterways.

Current funding is not sufficient to implement the adopted TMDL's in Region 1.

8. *How will the board monitor and enforce the TMDLs it has or will adopt?*

Answer:

As pointed out above, funds for monitoring are critically lacking and state funds are not sufficient to adequately monitor watersheds following the TMDL development. Staff are unable to establish clear benchmarks, trends and prescribe necessary management on monitoring data.

Landowners are required to do monitoring in TMDL watersheds as part of TMDL Implementation Plans. This monitoring tends to be project specific and does not provide for the big picture.

TMDL enforcement is done through the regional board regulatory authorities and also by specific regulatory mechanisms provided in TMDL Action Plans. Again, monitoring and enforcement of approved TMDL's in Region 1 is limited by current funding.

Enforcement of Water Quality Laws

Two years ago the office of the secretary of Cal-EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards were among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never sought criminal penalties for serious violations, and generally did not aggressively pursue violators.

9. *What enforcement options do you believe provide the most effective tools for violations of board orders?*

Answer:

In response to the criticism regarding enforcement, the region established an enforcement unit which has a very active enforcement program. The region enforcement unit works closely with local District Attorneys as well as other state and federal agencies including CalEPA.

The board has a range of enforcement options:

- *Notices of violation*
- *Administrative Civil Liability fines*
- *Criminal charges*

The board and its staff uses all of these options and applies what is appropriate. With the exception of Mandatory Minimum Penalties, staff generally use a progressive approach that is consistent with the SWRCB's enforcement policy.

10. *What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?*

Answer:

Fines play a vital role in our enforcement program. Fining violators punishes the responsible party and provides deterrence. Fines are usually less appropriate when new programs are implemented and the regulated community is working to comply.

Nonpoint Pollution – Freshwater Creek and Elk River

At the board's strategic plan workshop in April 2007, one of the most identified pollution sources in the north coast region was nonpoint pollution, which includes sedimentation?

For at least five years, your board has tried to deal with the issues of water quality specifically due to sedimentation buildup in the Freshwater Creek and the Elk River areas of Humboldt County. Your executive officer has issued orders for technical reports on abatement actions for dischargers who harvest timber in the area. The board has issued cleanup abatement orders on these same timber harvest operators; however, Freshwater Creek and Elk River residents still complain about the impairment of their water---both for agriculture and domestic uses.

11. *What do you believe the board should be doing to address nonpoint pollution in these two areas? Specifically, should additional action be taken to mitigate the sedimentation buildup?*

Answer:

The approach for these watersheds is to reduce new sources of sediment and stop the discharge of existing sources. The next step would be to restore the downstream channels.

The board has reduced the generation of new sediment affecting peak flow from timber operations. The Executive Officer has issued Orders to clean up existing discharges of excess sediment and provide alternative supplies to 11 residences in South Fork Elk. TMDL's are in preparation for both watersheds and will identify additional measures to restore these streams.

Physical changes need to occur in the channels in order to restore the capacity of the channels to carry storm flows. Channel capacity will improve by clearing vegetation and creating sedimentation basins and perhaps dredging. To expedite early implementation of the TMDL's, staff has secured grant funding to work with residents and county officials to accomplish the above tasks.

Sewage Treatment

A number of small, mostly rural, communities are having trouble improving their sewage systems. Under current law, if a sewage system is not in compliance, a mandatory minimum fine may be imposed.

12. *How many community sewage systems in your region are not in compliance with water quality laws? How is your board addressing this problem?*

Answer:

The North Coast Region has 25 communities with NPDES permits that discharge treated wastewater into surface waters. Of those 25 communities, 19 meet the definition of "small community". The regional water board has taken Administrative Civil Liability (ACL) actions against 21 of the 25 communities and currently is working on 2 of the remaining 4. Only 2 communities in the North Coast Region do not have effluent violations subject to the mandatory minimum penalty provisions of the Water Code.

Of the 21 communities that we (the regional board) have taken ACL action against, 17 have done or are doing Compliance Projects (CPs) over the next five years. The 4 communities that are not doing CPs are "large" communities and do not qualify for CPs.

We also have issued Cease and Desist Orders to 8 communities in the last few years. These have been to communities that have significant noncompliance issues and warrant enforcement action other than ACL for MMPs.

We support the Department of Financial Assistance programs for loans and grants to small communities. Currently, a total of 14 small communities (8 with NPDES permits) are on the Small Community Wastewater Grant program and a total of 38 (17 with NPDES permits) are on the State Revolving Fund priority list.

13. Has the mandatory minimum fine requirement moved communities toward improved compliance?

Answer:

Yes

14. What, if any, discretion does the board have in dealing with a community that cannot afford to upgrade its sewage system?

Answer:

We are struggling with a couple of communities that already have very high user charges, but are still not in compliance. They are all under enforcement orders with deadlines. We are working with them to help find grants and loans to supplement their user charges.

Blue Green Algae

For several years blue green algae blooms have been found in the Klamath River, Big Lagoon, and the Eel River. According to the Department of Health Services, the algae and the toxins it produce can cause skin rashes, skin and eye irritation, allergic reactions, gastrointestinal upset, and at high levels of exposure, serious illness or death. Humboldt County has reported several dog deaths as a result of exposure.

15. What is the extent of blue green algae blooms in the north coast region? Are there potential drinking water intakes in any affected waters?

Answer:

We don't know the full extent of the blue green algae blooms in our region. We are limited in our ability to sample in order to identify problems as discussed above. We are not aware of any drinking water systems that have been affected, and have worked closely with the Department of Health Services to ensure that community systems at risk monitor their intakes.

16. What level of science on blue green algae do you believe should trigger regulatory action by your board? Do you believe the board should act to address the issue of blue green algae blooms? If so, how?

Answer:

All levels of information and studies should be considered when identifying or listing criteria for regulatory action. There seems to be much more than what meets the eye on this growing issue. Policy and guidelines don't always address the economic and cultural concerns of all entities affected.

The board is aggressively addressing blue green algae problems on Copco and Iron Gate. The board directed the Executive Officer to post blooms as necessary. On July 3rd staff posted Copco and Iron Gate. The decision to post was based on the triggers established in the State guidelines. Controls to reduce the blooms are under development as part of the TMDL for the main stem of the Klamath.

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SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

June 25, 2007

Elizabeth P. Schneider

Dear Ms. Schneider:

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the San Diego Regional Water Quality Control Board on Wednesday, July 18, 2007. At this time you are not required to appear, but if we receive formal opposition to your appointment, you will be asked to appear before the committee.

Following are questions we would like you to address in writing prior to the hearing. Please respond by July 9th so committee members will have sufficient time to review the material before your hearing.

Statement of Goals

1. *What are your goals as a member of the San Diego Regional Water Quality Control Board? What do you hope to accomplish during your term? How will you measure your success?*

2. *What do you believe are the most serious problems facing your regional board?*

State and Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, particularly considering these are part-time positions.

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3. *Do the state board and your regional board staff assist you to better understand some of the complex issues before you if you request help? If not, where do you seek help when you need it? Do you have any suggestions on how the state water board's staff might better assist you?*

4. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop Total Maximum Daily Loads (TMDLs), and enforce permit and discharge requirements as well as state and federal water quality laws. However, regional board budgets are not reviewed individually by the Governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided through the state board appeals process instead of through a consistent statewide policy that is proactively established by the state board and implemented by the regional boards.

5. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?*

6. *How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing? Are there issues you believe get less attention than they need due to current funding levels and constraints on resources?*

Cleaning Up Polluted Waters

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal storm water permit programs and Total Maximum Daily Load (TMDL) programs, which are required under the Federal Clean Water Act to improve water quality by limiting the amount of pollutants allowed into water bodies.

Currently, regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

7. *Please describe the status of your board's TMDL process. Does your board have adequate resources to develop and implement the required TMDLs?*

8. *How will the board monitor and enforce the TMDLs it has or will adopt?*

Enforcement of Water Quality Laws

Two years ago the office of the secretary of Cal-EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards were among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never sought criminal penalties for serious violations, and generally did not aggressively pursue violators.

9. *What enforcement options do you believe provide the most effective tools for violations of board orders?*

10. *What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?*

Tijuana River Pollution

The Tijuana River flows north from Tijuana, Mexico, into the United States just west of Highway 5 at the US-Mexico border. In the United States the river flows west and empties into the Pacific Ocean, about 2.5 miles north of the border. Even though there is an International Wastewater Treatment Plant in Mexico, it cannot handle the volume of sewage that Tijuana generates, and untreated sewage and debris are discharged into the river. Ocean currents take the pollution north and contaminate south county beaches.

Though the federal government is ultimately responsible for negotiating a fix with Mexico, it is still a California issue insofar as the polluted river flows into the state. The regional board has issued a National Pollutant Discharge Elimination Permit to the U.S. International Boundary and Water Commission which operates a wastewater treatment plant in Mexico. The commission is out of compliance with the current permit. The capacity of the treatment plant is 25 million gallons per day but growth in the Tijuana area has overtaken the plant's capacity. In addition, the wastewater treatment plant does not handle the large amount of sedimentation and trash that is discharged into the river on the Mexican side and flow into the state.

According to the 2006-2007 Beach Report Card issued by Health Bay in May 2007, there were 17 beach closures, from Imperial Beach to the US border, due to sewage contaminated plumes coming from the Tijuana Estuary between April 2006 and March 2007.

11. *Given that the water quality issues of the Tijuana River are complex because the river and its pollution cross an international border, please outline your board's role in addressing water quality issues, such as sewage collection and wastewater treatment on the Tijuana River. What help do you receive from the state water board or other entities?*

12. *How do you believe this issue should be addressed?*

Sewage Overflows

The San Diego region has a long history of sewage overflows. In March 2007 there were 54 sewage overflows. One of the overflows by the City of Vista and Carlsbad Municipal Water District discharged 7.3 million gallons over several days. In April 2007 there were 40 sewage overflows in the area—11 greater than 1,000 gallons and 22 that reached surface waters, drainage ditches, or storm drains.

There were 25 beach closures in the San Diego region due to sewage overflows between April 2006 and March 2007.

13. *Please outline the progress or lack of progress the San Diego board has made in addressing the sewage overflow problems. Do you have the tools you need? When do you expect to see enough progress so that such sewage overflows are no longer routine?*

Fuel Leaks at a Federal Military Installation

The Point Loma Fuel Facility is one of five fuel facilities located on the Point Loma Peninsula in San Diego. This facility serves the military fuel needs of the west coast of the United States. There are 33 above-ground tanks and 24 underground tanks that store approximately 50.4 million gallons of fuel. The tanks were constructed in the 1930s and 1940s. Historically, approximately 1.5 million gallons have been released, but only 139,885 gallons have been recovered. Reports state that the underground fuel leak has moved beyond the boundary of the fuel facility and into the nearby La Playa neighborhood.

14. *Since 2004 your board has been the lead agency for the cleanup effort. What is the status of the cleanup?*

15. *The Navy was supposed to submit a feasibility study and propose a plan for cleanup at the end of last year. Has the feasibility plan been submitted to the board? If so, do you believe it contains appropriate actions to clean up the leaked fuel?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your assistance.

Sincerely,

DON PERATA

DP:KW

Elizabeth Pearson Schneider Responses San Diego

Elizabeth Pearson Schneider

July 2007

To: The Senate Rules Committee

Re: Confirmation -- My appointment to the San Diego Regional Water Quality Control Board – Answers to Questions

Thank you for providing me with the opportunity to respond to your questions regarding my confirmation to the San Diego Regional Water Quality Control Board. Please find below my answers.

Statement of Goals

1. I would like to accomplish four things:

   - For California to become the template, and set the standard, for other states throughout the United States as to how to bring the quality of our oceans, creeks, streams, etc. to levels that will ensure the health and safety of people and wildlife -- into perpetuity.
   - To educate people, businesses, organizations and other governmental bodies of the importance of water quality.
   - To help bring consistency throughout all the water boards as it relates to policies and enforcement.
   - To enact policies and develop enforcement in a way that is financially feasible -- and which can realistically be accomplished over a set period of time.

2. I believe the most problems facing our water board are:

   - A lack of awareness on the part of people, business, organizations and other governmental bodies of the economic impact that polluted waters can have on our State's economy.
   - A perception that our various water boards are inconsistent in their application and enforcement of policies.
   - A perception that implementing stringent permits and TMDLs cannot be accomplished without billions of dollars being expended.
   - A perception that the water boards are unwilling to provide tools that will aid permittees in complying with stringent policies and TMDL mandates.

State and Regional Board Roles

(2)

3. I believe the regional board staff is very helpful and that all staff has the best interests of the State at heart. I feel that the recent statewide workshops involving the public were excellent in terms of involving the public in the process and giving those who have negative perceptions of the board a more positive outlook. I think it also helped the board members and staff understand the major concerns of the public.

   The State staff could be more involved in ensuring that local jurisdictions are consistent in the application and enforcement of policies and could help ensure that the individual agendas of the local staff are not perceived by the public as being just that ... personal agendas.

4. The State water board's attorney, Phillip Wyel, spent an entire day educating me about the board and conflicts of interest. He did an excellent job. A manual was provided. The district's staff attorney is always available to answer our questions, and has done so wisely, in my case. As a 2nd term elected official, (City Council, City of Laguna Beach) I was, of course, sensitized to "conflicts of interest."

   I have recused on the issue of not being able to vote on the NPDES permit for my area (Orange County), but feel that this policy defeats the entire issue of having locals who are affected by the permits to be involved on the Board. The California Coastal Commission allows individuals on their boards to vote on issues from their jurisdictions (cities, counties) therefore, I'd like to recommend that this policy should be amended. I'm just one vote.

5. I believe the State Board does an excellent job interfacing with the local boards, however, I wonder if the State Board understands the perceptions by the public of the individual district boards and might suggest an annual survey to gauge those perceptions. (Could be completed online.)

6. I have heard from those who have talked to applicants that it takes a long time to get on the Agenda or to receive responses, so my perception is that there is a backlog, which I can only attribute to a huge project list and/or under-staffing.

Cleaning Up Polluted Waters

7. I believe our Board is on track in terms of developing and implementing the required TMDLs for our district. I think the reason that the boards may be behind is because the public demanded more time for inclusion in the process and I believe that this is the right thing to do. Further, I believe the public has a right to be allowed to use time frames and tools that will help them absorb the expense of complying.

8. There needs to be a methodical approach applied to the water bodies that need to be monitored, in terms of TMDLs. I believe the State and district boards must work together to establish the methodology.

Enforcement of Water Quality Laws

9. Re: violation of board orders – Clearly fines and penalties are effective – as is negative publicity.

10. If the Permits are issued and the TMDLs are mandated in such a way that allows a fair term of time to comply (a time frame that allows the absorbing of the major costs involved to implement) – and permit applicants and governmental bodies are allowed to use tools that will help them to more effectively comply, then fines and penalties should be used.

    I believe first-year and/or first-time offenses should be warnings (educational in nature) and that subsequent offenses should have a sliding scale in dollar penalty.

Tijuana River Pollution

11. As the Water Board that deals with this issue, I have become intimately familiar with it. This is a MAJOR issue, and I have agreed that we take two parallel tracks to address this issue.

    - continue to use legal efforts to force Mexico to address the issue
    - go ahead and build our own treatment plant on our side of the border

    I am disappointed that we have not been more aggressive in seeking Federal Funding to do this. I recommended at a recent Board Meeting that someone needed to contact Dianne Feinstein, who heads up "Authorization" and try to get funding IN THIS BUDGET to help us. I was told that staff usually does not take political action of this sort; therefore, I would encourage our legislators to do so as soon as possible. (Subsequently, someone quietly called Mrs. Feinstein and her representative in San Diego, James Peterson, called our staff to receive an update.)

    To answer your question: I think the State water board has helped to advise us legally, however, I believe the district staff needs to encourage State water board staff to help us gain funding when it is necessary to address serious water quality issues.

12. We need to take charge and build our own water treatment plant in San Diego and ask Congress for help to fund it.

Sewage Overflows

(4)

13. I am fairly new to the San Diego Water Board (only since March this year), however, based on what I have seen thus far, the Board has been very active with hearings, penalties and fines as it relates to sewage polluters.

Fuel Leaks at a Federal Military Installation

14. Status of cleanup: The Defense Energy Support Center (DESC) along with the Naval Base Point Loma (Navy) personnel completed site assessment activities in 2006. Site assessment activities defined the horizontal and vertical extent of the release both on the federal property and offsite to the north into the La Playa residential community. DESC and the Navy submitted a Draft Site Assessment Report (in March 2007) including a Human Health Risk Assessment, and a Draft Corrective Action Plan (CAP) (in December 2006). The Regional Board recently completed its review of the above-mentioned documents on April 26, 2007. The Draft CAP proposes site-specific cleanup goals, presents a feasibility study, and proposes an appropriate remedial plan to remove the non-aqueous phase liquid (NAPL) petroleum hydrocarbons present in situ beneath the Fleet Industrial Supply Center (FISC) Fuel Facility.

15. Feasibility study and plan for cleanup: No formal cleanup has occurred yet, however DESC and the Navy continue to operate the free product extraction system which acts as an interim protective measure to control plume movement towards San Diego Bay. Regional Board staff is scheduled to meet with the Navy and its consultants to discuss design specifics of the preferred remedial action (e.g. free product extraction system) on July 12, 2007.

August 7, 2007

Nettie Sabelhaus
Rules Committee Appointments Director
Room 402
State Capitol
Sacramento, CA 94814

Dear Ms. Sabelhaus:

Set forth below are my answers to the questions, along with the questions and explanatory text, set forth in Senator Perata's letter of July 5, 2007.

Statement of Goals

1. *What are your goals as a member of the Board of Forestry and Fire Protection? What do you hope to accomplish during your term? How will you measure your success?*

   I hope to enhance the effectiveness of the Board as a regulatory and policy-making body. This will require, at a minimum, enhanced resources particularly staff resources. Existing staffing levels are inadequate to provide the support necessary to develop and implement strong, timely and effective Board actions and initiatives.

   The following are specific substantive goals that I would like to accomplish:
   - complete the process for approving a management plan for Jackson Demonstration State Forest;
   - adopt final regulations that provide adequate protection to aquatic resources and are consistent with requirements of other agencies (Department of Fish and Game, state and regional water quality control boards, NMFS);
   - develop and implement, with other agencies, a structure and initiatives that will maximize the beneficial effects of forests and biomass-to-energy actions in efforts to address greenhouse gases;
   - further efforts to develop and implement methods for addressing cumulative watershed effects;
   - maximize coordination and seek consistency with other agencies in all areas, especially the Department of Fish and Game and the water quality control boards;
   - seek to develop efficient, coordinated, and streamlined regulatory processes that provide fully adequate resource protection, including the exploring the potential of performance based regulations;
   - support the fire prevention and suppression programs and actions of the Department of Forestry and Fire Protection (CDF) to make these as robust and effective as possible;
   - carefully monitor and support efforts to address sudden oak death.

The measure of success will the extent to which the Board is able to take effective action on each of them.

2. *What have been your most significant accomplishments as a member of the board?*

As chair of the Board's Forest Practice Committee, I have worked to create a process for independent review of literature relating to the Board's regulations for the restoration and protection in watersheds with threatened or impaired values. This on-going process reflects a broad consensus of interest groups and agencies. If successful, it can result in the adoption of permanent regulations that will provide adequate protection. The Board in July unanimously approved an extension of the existing interim regulations to allow the independent review process continue to completion.

I have worked to advance the management plan and accompanying environmental review documents under CEQA for Jackson Demonstration State Forest (JDSF). Issues relating to JDSF have been very contentious for many years. The establishment of an informal working group in Mendocino County has helped to create a basis for a management plan alternative that will further the research goals of the forest, preserve and manage forest resources, and provide for appropriate local and public input into actions and decisions affecting JDSF. While the process for approving the management plan is not yet complete, the progress that has been made to date has great potential to resolve long-standing conflicts.

I have caused the Board to reconsider and clarify guidance regarding program timber harvesting plans and program timber harvest EIRs to assure that the guidance does not conflict with the provisions of the Forest Practice Act.

Coho Salmon Protection

Coho salmon from San Francisco to the Oregon border have experienced a significant decline in the past 40 to 50 years. According to a study done for the National Marine Fisheries Service, wild populations of coho salmon today are less than 1 percent of what they were in the 1940s, and there has probably been at least a 70 percent decline since the 1960s.

In 1994 the Department of Fish and Game petitioned the Board of Forestry and Fire Protection to list coho salmon as a sensitive species. The board declined. In 1996 the state Fish and Game Commission listed coho salmon as endangered. Then in 1997 the federal National Marine Fisheries Services listed coho salmon as threatened.

The timber industry is interested in the state's coho salmon listing because, under section 2112 of the Fish and Game Code, if a timber operation might kill coho salmon, the timber company must first obtain an incidental take permit from the Department of

Fish and Game.

In 2000 the board amended the Forest Practice Rules to include Protection for Threatened and Impaired Watersheds regulations to enhance protection of listed salmon species. These regulations were adopted in 2000 because a state Scientific Review Panel concluded that the Forest Practice Rules did not sufficiently protect salmon. The Threatened and Impaired Watershed rules were to be a first step in increasing salmon protections. That is the only step that has been taken to date. These regulations were temporary and were extended in 2003, 2004, and 2006. They are due to expire December 31, 2007.

During the August 16, 2006, Rules Committee hearing on three members of the board, concern was expressed by several members of the committee that it had been 10 years since the federal listing, and the board was still discussing action that would take place in 2008.

The board at its July 12, 2007, hearing will have two items before them: (1) a one-year extension of the threatened and impaired watershed rules through December 31, 2008, and (2) adoption of coho salmon incidental-take assistance regulations. These regulations would apply additional protections where coho salmon are present and the Department of Fish and Game determines that coho will be taken by logging actions. CalTrout has stated that this process, where the board would certify that a timber harvest contains protections required by the Department of Fish and Game to issue an incidental-take permit, is an illegal delegation of authority from the Department of Fish and Game to the board. In addition, the board plans to continue with its scientific literature review through 2007 and make changes if necessary to the threatened and impaired watersheds regulations and make those regulations permanent beginning January 1, 2009.

3. *What types of additional protections are expected from the adoption of the coho salmon incidental-take assistance regulations?*

   Based on the information presented to the Board in the course of several hearings, it does not appear that these regulations, which the Board adopted in July, would provide any substantial degree of additional protection. For the most part, the rules restate provisions of existing rules applicable in watersheds with threatened or impaired values (T/I rules), and make these provisions permanent. The major enhanced protections in the regulations apply when DFG makes a determination that take would occur and the landowner requires incidental take authorization pursuant to the California Endangered Species Act. Few if any landowners have been required obtained incidental take authorization for DFG for individual THPs. The regulations may encourage landowners to include more protective measures in their THPs, but most of their more protective requirements will be likely to apply to few if any THPs.

4. *Has the Department of Fish and Game discussed with the Board of Forestry its criteria for making a determination that coho would be taken during a timber operation?*

   Although DFG has generally described the resources and process it will use in making take determinations, I am not aware that DFG has described specific criteria it will employ.

5. *Has the board reviewed the legal concerns raised by CalTrout that the coho salmon incidental-take regulations are an illegal delegation of authority? If so, what is the board's position?*

   I believe Board's counsel reviewed these concerns and concluded that the regulations of the Board and DFG do not constitute an illegal delegation of authority, and that the Board is in agreement with this conclusion.

6. *What is your view of the challenges in adopting permanent regulations to protect coho? Why are there still no permanent regulations in place after so many years?*

   Adoption of regulations by the Board requires five votes. Board members representing Industry and industry members of the public have expressed the view that there is no adequate scientific basis for such regulations. Given the statutory composition of the Board, the fact that for long periods one or more Board positions were unfilled, and the questions raised regarding the scientific basis for the regulations, the requisite Board support for permanent regulations could not be obtained, and it likely will not until the scientific basis for the regulations has been thoroughly evaluated. The biggest challenge to the adoption of permanent regulations is the view that there is inadequate scientific support for the regulations, and a resistance to accepting the views of DFG and NMFS as to the required degree of protection.

7. *Who is conducting a scientific literature review? Why did the board believe it was necessary?*

   The scientific literature review will be conducted by an independent outside contractor to be selected through a competitive bidding (RFP) process. The Board determined that this review is necessary to address concerns regarding the scientific basis for the regulations. (See previous answer.)

Timber Harvest Reviews

The Department of Forestry and Fire Protection is the lead agency for timber harvest reviews and is responsible for ensuring the sustainable production of timber. However, two of the other trustee agencies—the Department of Fish and Game and the regional water quality control boards—have statutory mandates that on occasion are more protective of resources and more restrictive of logging activities. Historically, this has

created a conflict between the agencies, with the Department of Forestry and Fire Protection often resistant to incorporating the changes requested by the Department of Fish and Game or regional water quality control boards.

8. *Please explain your views on whether the Department of Forestry and Fire Protection and the Board of Forestry and Fire Protection should act to resolve or address this conflict, and if so, how.*

   The Department and the Board should take all steps to coordinate with DFG and the regional boards. The Board is working with DFG on revisions to a joint policy on anadromous salmonids and will work to develop joint policies with the state and/or regional boards. The Board regulations on incidental take permits are one example of the potential for coordination. Public Resources Code § 4582.71, added by SB 810 several years ago, gives the regional boards added authority in connection with the approval of THPs.

Cumulative Impacts of Timber Harvesting

Over the last several years, governmental and scientific reports have pointed out that the timber harvest rules do not adequately address the cumulative impacts of harvesting timber. These studies indicate that (1) the decision whether to allow timber harvesting in a given watershed is made with inadequate scientific assessments, and (2) timber harvesting is not analyzed in terms of the potential continuing effects of prior timber harvesting.

9. *Should the issue of cumulative impacts be addressed by the board? If so, how?*

   The Board should move forward to address the issue of cumulative impacts. Knowledge of cumulative impacts will be of great assistance in addressing the best approach to regulating management practices on a site-specific watershed basis. The Board is following and supporting landscape level mapping efforts and pilot projects. The Board should assure that CDF and sister agencies direct resources to develop methods to address cumulative impacts, and that the analyses of cumulative impacts for THPs contains complete and adequate information.

10. *There have been attempts in the Legislature to regulate the rate of harvesting in watersheds. Do you believe the rate of harvest should be addressed by the board? If so, how?*

    Regulation of the rate of harvest has the potential to be an effective means of addressing cumulative impacts on a watershed basis. However, in the absence of robust data on cumulative impacts, establishing an appropriate rate of harvest is very difficult. Limitation on rate of harvest may be appropriate if it were to be demonstrated that without such a limitation, harvest activities are causing unacceptable impacts.

Fire Protection Regulation – Lake Tahoe

In June 2007 over 200 homes burned in the Angora fire in South Lake Tahoe. Many residents have complained that they were unable to gain the necessary permits from the Tahoe Regional Planning Agency to remove trees around their home to provide a defensible fire space.

While the Board of Forestry and Fire Protection is charged with administering the Forest Practices Act, one section of the act, Public Resources Code section 4516, gives the Tahoe Regional Planning Agency the authority to enact more stringent regulations than the Board of Forestry. There are in essence two sets of regulations and in the Lake Tahoe area the Tahoe Regional Planning Agency's regulations take precedence. The Board of Forestry has been working with the Tahoe Regional Planning Agency to harmonize their regulations as much as possible.

11. *Please describe the board's efforts to work with the Tahoe Regional Planning Agency to harmonize regulations.*

    The Board worked over many months with CDF, TRPA and the Lahontan Regional Water Quality Control Board to create a single, unified permit structure governing the removal of trees for fire prevention purposes. Numerous telephone conference calls and meetings took place, including at least one that I and another Board member attended to further our efforts to create a streamlined and unified permit structure. Despite these attempts, and despite the fact that the involved agencies share similar goals, the effort to develop a single permit structure was unsuccessful.

I would be glad to provide any additional information you may wish.

Yours truly,

David Nawi

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